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TWO TREATISES
OF GOVERNMENT

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NUMBER TWO

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TWO TREATISES OF GOVERNMENT

By JOHN LOCKE

WITH A SUPPLEMENT

PATRIARCHA BY ROBERT FILMER

EDITED WITH AN INTRODUCTION

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INTRODUCTION

LOCKE'S LIFE

THE ENGLISHMAN, John Locke, born in 1632, died in 1704. His life thus covered the Civil War period, the Bloodless Revolution, the Restoration, and the early years of the Whig Settlement. His mother died in his infancy. His father, a country lawyer and a captain in the Parliamentary Army during the Civil War, died while John was still young and left him a little property. Most of his life he was in weak health; and being also by temperament an exceedingly modest person he did not seek the limelight. After preliminary private tutoring he attended Westminster School, where, apart from the usual training in the classics, he acquired an early interest in science which was to stay with him for the rest of his life. From Westminster, he went to Christ Church, Oxford, where he was in residence during the Civil War and, incidentally, wrote verses in both English and Latin praising Cromwell. While he was highly critical of the standards and atmospheres of the University, he made many friends there, came under the influence of distinguished teachers, both Puritan and Royalist, and was impressed by the philosophy of Descartes, which he encountered there, thus further developing his scientific bent. After the Revolution he continued at college as a tutor, and studied to become a doctor. Though he never took his medical degree, he practiced briefly, and, following his introduction to Lord Ashley, afterwards Earl of Shaftesbury, who became his friend and patron, entered the latter's family as friend, physician, and special adviser. He was largely responsible for the drafting of *The Fundamental Constitutions of Carolina*: Lord Ashley was one of the chief proprietors of the colony. During his early years with Lord Ashley, he also formulated the foundation for the *Essay on Human Understanding*. When Shaftesbury became Chancellor, Locke became his special adviser, and subsequently held various minor offices in the government. For four years, between 1674-1679, Locke traveled and studied in France. In the latter year, he returned to Shaftesbury and continued his studies and writing, both in medicine and on religious toleration, a matter of con-

tinuous interest to him as a rationalistic Protestant. But Shaftesbury was later accused of conspiracy, was imprisoned for a while, escaped to Holland and there died. By reason of his connection with Shaftesbury, Locke, too, went to Holland, where he remained in exile for six years. While there, in 1684, he was expelled from Christ Church, Oxford. In Holland he resumed his studies, kept up his political connections, and shared in preparations for what became the Revolution of 1688. With this Revolution he returned to England and published the *Two Treatises*, with which we are here concerned, as well as his three *Letters on Toleration*, and a work on interest and money. For the next few years, nevertheless, he spent his time in retirement at Oates, with Lady Masham and her family. It was during this period that he wrote his *Thoughts Concerning Education*, which directly led to reforms in English education. He also prepared the second edition of his celebrated *Essay*. After 1695, with the exception of five years in various administrative offices, which included membership in the Board of Trade and Plantations, he was in retirement, engaged in controversies over religion, kept in close touch with political affairs, and produced the fourth and final *Letter on Toleration*.

The preceding is a very brief recording of some of the facts of Locke's life. Despite minor elements of drama, it was on the whole a quiet and respectable life -- substantial, but not outwardly impressive. Locke did not suffer from real poverty or danger at any time, nor, despite his years of exile, can it be said that he was seriously persecuted. Indeed, considering the troubled conditions of the time, his position as an intellectual leader of Whiggism, and his prolonged connection with Shaftesbury, who fell into disrepute and was implicated in the Monmouth Conspiracy, Locke suffered surprisingly little embarrassment. From another point of view, however, his life was extraordinarily adventurous; and, for one who suffered continuously from ill-health, extraordinarily productive. He was a contributor to almost all the main fields of human interest, except belles-lettres and the fine arts. His activities comprised those of teacher, physician, scholar, administrator, and behind-the-scenes politician. He was also one of the early members and main lights in the Royal Society, which did so much to promote science and useful knowledge. For the work here to be discussed, it is especially significant that Locke was at once a profound philosopher and scientific thinker concerned in

examining fundamental questions of nature, of man, and of society, and also a friend of leading statesmen, an adviser to revolutionaries who were to change the succession to the throne and the institutions of government. He was thus a man who by practical experience, no less than by reflection, knew the problems of government and of political economy. The *Two Treatises* emerge as the work of one who combined profound philosophical insight with a genuine understanding of the nature of statecraft. They constitute both the systematic manifesto and program of a revolution, and a classic of analysis, lasting, thoroughgoing, temperate, and wise.

THE TWO TREATISES OF CIVIL GOVERNMENT

(Locke's *Two Treatises of Civil Government* first appeared anonymously in an incorrect edition in 1690. The immediate objectives of the work were the defense of the glorious and bloodless Revolution of 1688, and, specifically, the justification of the change in the line of succession brought about by that Revolution, by founding King William III's title on the consent of the people. Locke himself stated in an oft-quoted passage of the Preface that it was his object "to establish the throne of our great restorer, our present King William," and he went on to emphasize that, on the basis of consent, the establishment of William freed the people of England from tyranny and safeguarded the natural rights which belonged to them as individuals. The work was thus a defense of the Whig settlement and an exposition of the fundamental principles of Whiggism on which that settlement rested.)

At the outset several points are worthy of note. First of all, the work was a defense, and not a condemnation, of monarchy, at least under the particular circumstances, and provided monarchy were rested on a proper foundation. Secondly, it stressed consent of the governed as the basic justification of government, and so opened the way for any form of government which could claim that consent. Thirdly, it rested consent on the natural rights of the people, and so made it a collective community consent. Fourthly, it equated natural rights with justice, and opposed justice to tyranny, thus linking the ancient concept of reason against tyranny with the new doctrine of

natural rights. Fifthly, and incidentally, it may be noted that Locke felt it necessary and desirable to justify the revolt of the British people before the opinion of the Western world, thus setting a precedent for the *Declaration of Independence* which similarly justified the American Revolution.)

Nevertheless, Locke's *Two Treatises* are manifestly not simply a vindication of a particular act. Nor were the ideas he there developed merely partisan pleading, conceived and written for that particular occasion. Locke was, indeed, a Whig: he had for the major part of his adult life been associated with Whigs, and he shared in general the Whig philosophy, though his ideas did not at all points support those of the spokesmen of the Convention Parliament. Even a cursory reading of the *Two Treatises* indicates that Locke grounded his Whiggism on his philosophical search for a fundamental and rational basis for political authority and order. His philosophy and his associations alike made him a Whig, and his Whiggism led him to approve and to justify the Revolution and the Settlement.

Much of the influence of the *Two Treatises* undoubtedly rests on this happy conjunction of events: a great philosopher developed a political theory which was at the same time the rationale of a revolutionary settlement. The Whig state, which came into being thereby, used that philosopher's political teaching as at once the justification of its being, the defense of its institutions, and a general guide to its policies. Whigs made and wrote British constitutional history, and by the time that Whiggism was transformed by new men and newer doctrines, the constitutional institutions and the political convictions of John Locke had already become an unchallenged part of the British governmental tradition, even though Locke's specific arguments were forgotten, and some of his assumptions rejected.

THE FIRST TREATISE AND PATRIARCHA

(THE *First Treatise* is itself revealing of the degree to which Locke was an apologist for the Whig Revolution. That Treatise was a systematic and almost labored attack in detail on Sir Robert Filmer, and especially on *Patriarcha*, a work written sometime before Filmer's death in 1653 and published in 1680.) *Patriarcha* was a sustained

defense of divine right monarchy, of the position that the monarch ruled by the will of God, and that his authority was beyond challenge or question. Filmer had rested his case primarily on the premise that monarchical power was essentially patriarchal or paternal in character, and was hence natural or God-given. He had attempted to show that God had given to Adam authority over his children, which was not simply the authority of the father, but, derivatively, the authority of a king; and he had gone on to demonstrate to his own satisfaction that the original Stuart line in England derived its claim to rule by an indisputable genealogical line from Adam. This was no doubt absurd, and Locke was able to poke sustainedly serious fun at it with real success. Yet Filmer had developed his patriarchal theory in order to perfect the theory of divine right. The realistic argument therefor had insisted on the need for absolute authority in government to maintain stability and avoid revolution. It had rested that authority immediately on the right of succession and on the divine institution of kingship. In essence it had insisted on the necessity for mystery and unchallengeability; and had opposed, as leading to instability, any logical, and above all any popular, examination or criticism of the authority of government. In this respect it had been a wise defense of absolute monarchy, since it put the authority of the monarch beyond utilitarian considerations, even though defenders of the doctrine, including Filmer himself, argued the superior practicality of monarchy. (Nevertheless, the grounds on which Locke primarily attacked Filmer were that he tried to rest the authority of the king, derived from Adam, on the rights of paternity and of property, and it was undoubtedly out of the rationalistic examination of these grounds, and his attempt to avoid unnecessary assumptions, that Locke developed his own theory.)

Now it has been customary to argue two very different views concerning Locke's *First Treatise*. The first is that Locke was really not very much concerned with Filmer, but was using him as a stalking horse to attack the far more powerful political teachings of Thomas Hobbes, the author of *Leviathan*, whom it was inexpedient to tackle directly, since Hobbes was a fellow rationalist and had become a sinister and largely mythical figure in the few decades since he had lived and written. The second view is that Locke completely demolished Filmer, a foe scarcely worthy of him, and that the latter survives

only because Locke did him this signal honor.¹ While some recent writers have already challenged these positions, they remain the accepted ones. Yet both are largely untrue. To take the second first, we know that Locke himself was far less effective in his attack than Tyrrell, the author of *Patriarcha Non Monarcha*. Locke, to be sure, undermined Filmer's identification of paternal with monarchical power as well as his attempt to interrelate property and paternal rights; and more cogently still he showed that Filmer's genealogy was nonsensical, and that the logic of descent from Adam via Noah as a basis for authority would more properly conclude with "every man a king," especially since Filmer's initial premises did not justify the superior, far less the exclusive, claims of the oldest son. Nevertheless, while Filmer's specific allegations of fact were easy to challenge, and his detailed arguments were invalid, his fundamental attitude was properly historical and sociological. To tie this attitude to absolute monarchy and patriarchal doctrine was, no doubt, necessary to Filmer's purpose. Yet a careful reading of *Patriarcha* and of the *First Treatise* makes it clear that Locke, in attacking Filmer where he was vulnerable, was also undermining, without ever facing it, this historical view point, and was defending both a non-historical, if not anti-historical, rationalism and a non-social individualism which could not be reconciled with his position both in the *Second Treatise* and in the Preface already discussed, where Locke makes it clear that he was not in politics a pure individualist. The essential and lasting value in Filmer, surviving the dead but not intellectually disreputable doctrine of divine right, was his stress on the historical continuity of society, the conditioning of institutions by their past, the significance of social institutions as living and largely non-rational structures, and his recognition of the fact that the individual can not be considered as a free and isolated being. To endeavor to argue that monarchy was an extension of the family and a development from it, or even to claim a strict analogy between king and father, was no doubt error. It was also error, and one which Locke convincingly combatted, to identify too readily the historical origins with the moral justification of authority. Nevertheless, the family was one of the sources of primitive governmental authority and, in societies lacking wider units of organization, such authority could not be analytically separated from paternal authority. Furthermore, growth and expansion of families

was undoubtedly one of the sources, though not the chief source, of the governmental institution. Somewhat differently again, men in more developed societies are conditioned not only by the family, but also by the folkways and mores under which they live, and by the customary and accepted governmental institutions, or at least by the prevalent myths concerning them. While Filmer was ridden by his special purpose, his analysis for all its defects involved a dim perception of all these matters. It was at bottom by no means weak as a reply to the social contract theory and to the individualistic and a priori rationalistic natural rights doctrine, which was then beginning to achieve popularity. It was, indeed, the historical good fortune of natural rights and social contract doctrine that the opposition was associated either with divine right or with Catholic teaching, whereas science and progress seemed largely connected with Protestantism, especially in England which was destined to be the economic and political leader of the Western world for the next two centuries. (From the viewpoint, however, of a later age endeavoring to restore the claims of community, the blessing was by no means unmixed, since the social rights and contract philosophies tended, in their post-Lockean development, to an extreme individualism signally unfortunate in some of its consequences, and since they hampered by their very success the development of more adequate theories of nature and of society. Locke effectively revealed the fallacies of Filmer, but he evaded the difficulties in his own position, for which he cleared the ground too completely.)

(Even though Locke did not meet the issue head-on, the fact that his criticism was intended to defend the natural rights position as against a historical and traditional approach suggests that there was deliberate purpose in his choosing Filmer rather than Hobbes as his antagonist. Locke's intention was to champion limited constitutional monarchy, and to rest monarchy on consent rather than on hereditary right.) The Civil War in England, the execution of King Charles I, and the dubious support of that execution by Milton, had already made it clear that absolute divine right monarchy was at an end. Yet the failure of the Commonwealth had begotten the Restoration, and the Restoration had precisely challenged the execution of the King. Filmer was the effective apologist of the Restoration. It was, therefore, practically necessary to dispose of the Restoration arguments

in order to justify the invitation to William, which constituted a revolution, however bloodless. Hence the undermining of Filmer was of the greatest practical significance. To tackle Hobbes directly, on the other hand, was very largely unnecessary, since the issue raised by the specific doctrines of constitutional monarchy did not concern the general doctrine of political might as an alternative to anarchy. The Whigs were eager to justify their revolution, to combat absolute monarchy and the doctrine of unrestrained prerogative. The alternative to absolute monarchy was not simply another Commonwealth. The Protectorate, as well as Republicanism, was a dead issue. Hobbes had defended a *de facto* sovereignty. The Whigs by their practice were at once to satisfy his conditions and to deny the validity of his absolutism. Their immediate task was to win to themselves moderate men of all parties by the propaganda both of word and of deed. They had to slay finally the teaching of "divine right" as well as to liquidate the romantic appeal of the Stuarts. For these practical reasons, as well as for the triumph of the natural law doctrine, (Filmer was the real enemy and not a stalking horse; and Locke was surely right to pose the alternative of constitutional *versus* absolute monarchy, rather than directly to raise against Hobbes the whole question of the character of man, and of the possibilities of governing him.) Moreover, the latter issue was much more effectively met by the positive development of an alternative theory of natural law and natural right, which Locke undertook in the *Second Treatise*, where, without controversy, he provided an answer to the Hobbesian *tour de force* and recaptured natural law and natural rights for constitutionalism and consent. Incidentally, it might be added that it would have been much easier to refute directly the Hobbesian thesis of a savage state of nature than it was to meet Filmer's more moderate point of view. To do this, however, would have called into question the whole doctrine of the state of nature and of social contract, and would have rendered the Lockean position itself less convincing. Above all, it was Locke's objective to defend the rational purpose of government, which he regarded as its justification, against the defense of government as myth, mysticism, and mystery. He had to show precisely that the grounds of authority and obedience were subject to rational analysis; that it was not men's duty passively to obey and to regard government with awe as a divine institution outside the realm of rational examination.

At the same time, whatever the possible anarchist culmination of rationalist analysis, it was Locke's purpose to defend the institution of government, and to maintain rather than to combat the concept of sovereignty. Indeed, his object was to insist not only that the public welfare was the test of good government and the basis for properly imposing obligations on the citizens of a country, but also that the public welfare made government necessary. (The protection of the nation as a whole and the protection of property were for Locke the criteria of good government,) as is clearly indicated in the last paragraph of the first chapter of Book II, where, having summarized his condemnation of Filmer, Locke indicates succinctly his view of the nature and rationale of political authority:

Political power, then, I take to be a right of making laws, with penalties of death, and consequently all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defense of the commonwealth from foreign injury, and all this only for the public good.

THE SECOND TREATISE

The *Second Treatise* is in its essence a commentary on the above paragraph; designed, first, to justify the viewpoint taken, and, secondly, to indicate the institutional arrangements necessary for assuring that political power will in fact work for the public good and will, consequently, be stable.)

The State of Nature

While Locke, in attacking Filmer, had rejected the position that an account of origins was an ethical justification of authority, he himself seems to have fallen into the same confusion, since he insists that his own state of nature was an actual condition (Chapter 2, Sections 14 and 15). Yet his own analysis of the state of nature makes it clear that what he was actually trying to do was to discover the pure and uniform nature of the human being himself, stripped of all the adventitious characteristics which mark any particular adult developing under special conditions. Locke's individual in the state of nature was

a representation of the pure capacities of the human being unconditioned; and Locke in his attempt to avoid unnecessary hypothesis rejected the historical or sociological approach just because it failed to reveal the lowest common denominator, the universal aspects of man.)

(The concept of the state of nature is in fact the point at which Locke's political theory is tied to the *Essay Concerning Human Understanding*. In his *Essay* he had examined the basic characteristics of man — in what uniform manner he assimilates, and reacts to whatever external events enter his experience. Locke, in short, tried to go beyond history, to discover in the essence of personality the necessity and ethical justification of government, and the particular institutions which, instead of frustrating, would truly fulfill the needs of human nature. In this sense, his rationalism is skeptical, dissolvent, and individualistic. He is to be criticized, not for attempting to discover the nature of primitive man, but for assuming that man may be analyzed as a socially unconditioned being. Yet he himself, by reason of his celebrated common sense, which kept him from an abstract empiricism, avoided the difficulties of conceiving isolated and original beings, as if they were real *tabulae rasae*, incapable of experience because devoid of actual historical experience or character. He strips from men in the state of nature the actual restraints and inequalities of society, and so comes to find them free and equal. Attributing their irrationalities of behavior to the consequences of such restraints and inequalities in particular environments, he finds them to be rational as well as free and equal. He thereupon reconstructs a world proceeding from that freedom and equality, but arranged by natural reason. This reconstructed world is then a social one, but without particular governments. It is social, however, not because society is a growth, but because reason, individual yet common to all, under conditions of liberty and equality, creates no biases, but rather dictates mutual respect and consideration. For in maintaining these, consistently and uniformly for all, society is using an enlightened logic to secure conditions for liberty.)

(In this analysis, we note first, Locke had stripped from men their particular conditions and environment, but he had still left them with a limited, and limiting, environment which forced them to resort to the particular logic of mutual respect and common universal rights.

Locke was thus enabled to insist that the state of nature, for all its liberty, was not one of mere license, but was governed by law. He argued, indeed, that each man had the right to punish violations of that law, and he proclaimed that the state of nature was not one in which power could be exercised arbitrarily. It was not a state of conflict, not what it was in Hobbesian theory. It was a state of right, not might. If this were so, however, it would seem that, at least for adults — for Locke admits that freedom and rationality are not for, or in, babes, but are achieved only in adults — anarchy would be the only proper philosophic conclusion. He avoids this, however, by a further exercise of common sense; he imports into the state of nature something of the irrational prejudice of men as observed in society. For, despite his own logic, he insists that they are all creatures of self-interest, biased by their particular viewpoint and relative position, incapable of a genuine disinterestedness and objectivity in construing the law of nature, however great their reason. His political state is intended, as was Plato's provision for the guardians, to overcome bias. Unlike Plato, however, he regards all men not only as biased, but also as possessing equally a capacity for reason.

Political Society and the Social Contract

(For Locke, therefore, the whole purpose of political society, and the basis of the social contract by which it is created, is to overcome what he himself called the "inconvenience of the state of nature." This inconvenience consists solely and exclusively in the lack of an authoritative judge between and above parties to disputes. Disputes necessarily arise in the social contacts of the state of nature, among men who, according to Locke, are socially minded, yet each is engaged in the pursuit of his individual interests and possessed of individual rights in an environment which does not satisfy all his needs. In particular, the exercise of the freedom of the person and the acquisition and use of property involve real possibilities for disagreement; and, where such disagreement occurs, individuals, strong in the self-righteousness of their cause, find themselves, though seeking peace, lacking an arbitrator between them. Their state of nature, in fact, is in constant danger of degenerating into that state of conflict which was Hobbes' state of nature. They need, then, as social beings who would deplore

such an event, to find some means of avoiding it, and they see that this can be done only by the setting up of a common judge. They need to protect themselves from injury by those who would take law into their own hands, and from such behavior on their own part. In other words, the state is an organization voluntarily created by the consent of natural men who abandon and hand over their right to their own interpretation and enforcement of their own natural rights. For Locke the state is thus a judicial body, interpreting the law of nature for individuals who have not surrendered one iota of their natural rights, but who have by their own consent created that state simply and solely that it may, without favor to any man or group, and without bias against any man or group, interpret objectively those rights and use the collective authority to enforce their observance. The implications of this position are vital. First of all, men are equal in rights, and it is the state's function to give equal protection to those rights. Thus the Lockean theory reinforced the concept of law as uniform and as connected with classes of events rather than with particular persons having relations and claims based on status. Secondly, since the state is to protect rights pre-existing, and not to create rights, the implication is a limited state, one which will not impose obligations arising from social growth without regard to those supposedly fundamental properties of individuals. Locke is the real father of the doctrine of individual rights, not simply against the community, but within it. Rights not merely set limits on the activity of government, but constitute the very purpose of its whole position and action. Thirdly, Locke is himself a source of the doctrine of respect for political authority and of reverence for law. Such respect and reverence are due the state, according to Locke, not because of its pretended personality or independent will, but because it is the very embodiment of the disinterested judge. The English Whig state so intimately identified with his teachings held precisely this as its ideal.

According to this theory legislation is essentially a work of interpreting natural law through judicial activity, carried out by an authority standing apart from and above the biased individuals for whom it acts as interpreter of their real will to achieve rational disinterestedness. The doctrine of a real will was indeed developed, not by Locke, but by Rousseau. Yet the idea that disinterestedness is of

the essence of the state is Locke's, and he identifies this essence with legislative activity. (Legislation is neither social expediency nor the result of the pressure of group forces which are weighed in the legislative process. It is a judicial interpretation of the moral claims of individuals to freedom and to property, made disinterestedly, and so demanding obedience. Next, this disinterestedness is characteristic only of the state which protects rights; and the only state which does so is one based on men's consent in its creation.) But rational men would only consent to a state in which government itself would be responsible to them, would acknowledge itself as limited by the purpose of achieving rights, and would be organized so to do. From this Locke infers that no absolute monarchy can be a legitimate government, since it is by nature arbitrary, and necessarily invades men's liberties. It is in Locke that the second part of Acton's dictum that "absolute power corrupts absolutely" has its modern foundation. Locke, here again, relates the source and purpose of authority to the institutions of government. Absolute monarchy is bad because under it the executive and legislative branches are not separated, and so rights are not protected within the institutions of government themselves. Such monarchy, therefore, could not receive the consent of men concerned to protect rights. Locke specifically rejects the major rational argument for absolute monarchy, that the monarch is a disinterested party above the strife of particular interests and concerned solely with the welfare of the whole.)

(The next noteworthy point is that, while Locke both limits the scope of legislation and turns it into an essentially judicial activity, he nevertheless restores legislation as the essential function of the state. In so doing he combatted medieval theory on the one hand, and the practice of the absolute monarchs who had founded the national state on the other.) Of his separation of executive and legislative power, more will be said later. (Here it is necessary to note that he reduces the executive function to a subordinate and implemental role, thereby providing one of the foundations of constitutional democracy. He attacks the whole power of prerogative of the monarchical executive, who had made the state a positive administrative organization, and had himself legislated as an incident to his administrative functioning. Thus the function of the legislature, which had been to consent to or limit the necessary administrative action of

government, is changed by Locke to become the central task of government, with administration incidental thereto. This was the essence of the Whig Revolution, and the meaning given by it to the British struggle from the Civil War on. With the decline of feudalism, the consent of Parliament had ceased to be the participation in government of estates and of persons enjoying feudal rights, and had become the critical support of administrative leadership. With the coming of Whiggism, the ground was prepared for making the executive the administrator of legislative will. But at the same time the state became a legislative state. The medieval idea of law as founded on higher law was finally overthrown; or rather natural rights took the place of higher law, and legislation became the objective and ethical realization of those rights in the organized community or state.

It is in the technique of the contract itself that Locke relates the general doctrine of consent to the practical necessity for a government that can really govern. That is to say, government would be impossible if it continuously needed for all its actions and laws the individual consent of every citizen. All men, he argues, do indeed agree to the initial contract for the protecting of their natural rights. Moreover, any man on coming into a country joins himself to that country, as no less than if he were born in it, either by putative consent or by non-emigration. What men specifically agree to, however, is to be bound by the decisions of the majority. According to Locke, therefore, the contract creates government by majority. Apparently the ground for this is the belief that to consent to absolute monarchy or to minority government is to court tyranny and the destruction of natural rights, since an individual or minority will not have that disinterestedness which is the very mark of the just judge. On the other hand, to demand more from the contract is to make stable government impossible, since the exercise of a free veto of the individual would defeat the very purpose of having an established judge. Locke is thus enabled initially, and on the basis of the seeming requirements of common sense, to relate the concepts of individual rights and of their disinterested interpretation to the claim of the majority to be the true government. His teaching, therefore, seems to justify the absolute claim of the majority to represent the real consent of the whole, and to argue that the voice of the majority of the people must be identified with the will of the whole. This will, however, is not the

voice of God, but the voice of all for the protection of the rights and freedom of each. It is therefore clear that Locke is not arguing an absolute majoritarian thesis. First, the purposes of the contract itself establish limitations: the majority can legislate only to interpret, and not to limit, rights. Secondly, periodic elections, which Locke assumes to be morally necessary even though he admits that the calling of Parliaments in England is part of the royal prerogative, constitute a limitation: they give opportunity for expressions of changes in popular views, and so give protection to rights. Thirdly, the legislators as part of the community will feel an obligation to it, and will share its interest in the purposes of the contract. Fourthly, should they act contrary to those purposes, they become essentially tyrannical or rebels against the society which created them. Under such circumstances the celebrated Lockean right of revolution presumably comes into play, and the threat of such revolution is a final insurance against abuse of power.

Locke's discussion of revolution is directed, it is true, primarily against non-representative government. Not the least purpose of the social contract was to insure a form of government which would actually be stable, and would legitimately impose a duty of obedience on the subject, depriving him of justifiable grounds for disturbances, revolt, or revolution. For Locke very clearly took the point of view that a rational society is a peaceful one where men enjoy their rights undisturbed. His doctrine of majority rule was precisely a plan for changing governors, when, as the result of debate between men interested in peace and its enjoyment, it became clear that the existing persons in the legislature were abusing power and were creating conditions which would properly lead to disturbances in the Commonwealth. The Lockean right of revolution would, therefore, normally be exercised under conditions where the majority does not rule. Yet, if the majority consistently abused its power, perpetuated itself in power, or attacked men's rights, revolution to overthrow it, too, would be justified. However, this Locke would approve as a practical matter only if the government did not submit itself to popular judgment at the next election, but prolonged its life by its own act. For Locke, as a defender of stability, insists that minor errors are the necessary result of human fallability and have to be borne. He implies, moreover, that even more serious ones are properly to be borne until they

may be corrected, provided there are mechanisms for change, and provided, too, that those who are in power submit to those mechanisms. His right to revolution, therefore, is hedged and conditioned, but it is a genuine protection against tyranny.)

(Furthermore, Locke conceived that legislative authority, acting under conditions of publicity and debate, was unlikely to result in abuse. The really dangerous power, Locke felt, was executive power, acting rapidly and directly on its own will without debate or without consultation with the community.) In a society where the executive power was separate and distinct from the legislative, and placed in subordination to it, as Locke believed it would be in the limited monarchy which he was defending and advocating, there was an institutional protection against tyranny and against the necessity of revolution. Should the executive try to make itself dominant by ignoring legislative limitation on it and by refusing to abide by the supremacy of the legislative, resistance and revolt would be justifiable. But, in a system created by the contract, this would be unlikely to occur. It should be added that, although Locke in general vigorously opposed the abuse of executive power, he acknowledged that at certain times, when the legislature was not in session, a fairly wide variety of discretionary powers had to be entrusted to the executive. In discussing the prerogative, he noted with approval the tendency to grant larger powers to the executive where, over a period of time, that executive had shown moderation and wisdom. (Thus Locke suggested that an executive within a constitutional state would enjoy power longest, and would be given greatest effective power, when that power was exercised in consonance with the popular good and for the protection of rights.)

The Concept of a Commonwealth

Little attention has been given to the theoretically curious fact that Locke accepted the concept of the national community or commonwealth. For the logic of natural rights was clearly universalism; and in itself the state of nature, even on Locke's own premises, provided no clear basis for the creation of individual nation-states. Locke even made this point specifically in the course of combatting the claim of absolute monarchy and appealed from the history and tradition of

particular nations to the universal claims of mankind.) Moreover, he seems to have taken the view that individuals have the right to withdraw from the jurisdiction of a particular government. Locke gives little rationale for the creation of individual states out of a state of nature; rather he takes it for granted that even in the state of nature men find themselves in particular environments and communities, supposedly isolated from others. In the main, however, for all his talk of transition from a state of nature, Locke really accepted the existence of nation-states as a fact and took for granted that they would continue to exercise their sovereignty, though he did not use this last term. He employed the concept of the state of nature precisely to combat historical claims to authority over the inhabitants of a country, and did not apply it at all to undermine the natural state, or even to analyze the nature of a people or nation. In the event, this was of considerable importance, since it permitted natural law to be made the basis for constitutionalizing the absolute nation-states which had come into being, and at the same time permitted monarchical sovereignty to remain in the sphere of external affairs. At the time of the American Revolution, Locke's theory of natural rights, combined with other doctrines drawn from French sources, was used to support the setting up of a new government for a new people living in a territory of its own. Locke was, however, even more useful to justify protest against the British Government on the part of Englishmen overseas who felt that, within the confines of that government, they had been deprived of their natural rights as members of a commonwealth.

The issue is of special significance because (Locke quite deliberately asserts that the object of coming out of the state of nature is not only to protect the rights of men as individuals within the particular commonwealth, but also to protect men both individually and collectively against other peoples. Those other peoples presumably are to be organized similarly. Yet surely, if all enjoyed natural rights, and if it was necessary to have a judge to interpret those rights, the need for a world organization followed inevitably.) Locke in no wise confronted this issue. He did, however, accept the ancient doctrine of just and unjust wars and, in discussing conquest, attacked the illegitimate invasion of one state by another. He also insisted that the conqueror has no just basis for attacking the rights, and especially the right of property, of those conquered, save in so far as they themselves con-

sented to unjust war against him, and so were subject to his unilateral use of power to compensate him for the costs and damages of war. To put it otherwise, the conqueror has a despotical power not based on consent, provided his cause is just: otherwise he has no legitimate power. Locke, it is true, regarded the whole situation arising from war, and based on the use of force, at bottom as irrational and arbitrary. Yet his own theory of the state as protector of the natural rights of its inhabitants collectively gave no real reason against making war, save insofar as he implied that a nation founded on contract should not, and presumably would not, go to war — save in defense of those rights. Nevertheless, on his own premises nations are in a state of nature, for they lack a common judge over them. And Locke, far from endeavoring to overcome this, placed as parallel and equal with the executive power what he called the “Federative,” which was precisely the executive power in “the management of the security and interest in the public outside” (Chapter 12, Section 147), or, in other terms, in the conduct of foreign affairs. More astonishingly still, Locke, who was so concerned with the limitation of the executive by the legislature, readily acknowledged that this power of conducting foreign affairs is far less limited. Hence, in the field where there is no common judge, there is also to be the least control and consent from within the nation. Locke gives aid and comfort to the view that foreign affairs are *arcana imperii*. He not only failed to argue the need for a supernational organization: he also did not even advocate effective control of foreign policy by public opinion. The Catholic doctrine of natural law had stated that a higher law, interpreted by the Church, limited the state in the international sphere also. The doctrine of royal sovereignty had been used by Grotius and others to limit and civilize war. Locke’s doctrine of natural law which, as noted above, offered *internally* a substitute for a higher law doctrine, *internationally* provided no equivalent. Thus, while under limited monarchy, sovereignty in internal affairs was transferred from the absolute monarch to the legislature; in international affairs, authority was left in the executive hands and hence separated from the highest responsible authority, the legislature. However, aggressive nationalism was certainly not espoused by Locke, and the safety and welfare of the collective people was made by him fundamental. Internally he defended a diminished state on the basis of individual

rights; in external affairs he set up the general criteria of safety and welfare without similar limitations.

To summarize: The implications of Locke's teaching in the field of international relations were not generally noted by other thinkers on whom he here had little influence. Nevertheless his doctrine with its sinister divorce of natural law from universalism and even from international law was prophetic of the foreign relations of constitutional states.

His Theory of Property

Perhaps the most celebrated and influential part of Locke's teachings has been his theory of property. The reason is that Locke made individual property, along with life and liberty, a natural right — a right existing in the state of nature. The political state had, therefore, as one of its main objectives, the protection of men in the enjoyment of this pre-existing right, and as judicial interpreter of natural rights the state was here particularly important, since differences over property in the state of nature were one of the chief causes of conflict there. Moreover, since property was a natural right, the state itself could not take it via taxation save with men's consent. Thus the right of property became one of the main tenets of the doctrine that consent is the basis of a just government, and the taking of that property for public purposes was limited, since the only public purpose to which men would properly consent was the protection of their property and their liberty.)

Various thinkers, both before and after Locke, have argued that the state turns possession into property, thereby giving to a bare fact both a legal and an ethical status. While some of them have argued that this is a major benefit derived from the creation of an organized state, others have insisted that the state gives the sanctions both of its force and of its ethical and legal authority to maintain a type of possession which is the result of forceful taking from the common lot. Thus the state, they argue, in creating the legal right of property, essentially sanctions an inequality previously created and without ethical right; therefore the state may appropriately be transformed or overthrown, as necessity dictates, in order to achieve justice. Though most of such theories were developed after Locke, and though at least one of

them — that of Marx — even owed much to Locke, the Lockean theory that property is a universal right prior to the state and an inherent “propriety” of the human being, was a powerful counter-argument to such pleading.

Locke, of course, was not unique in his insistence on property as a natural right. That concept was fundamental to the teaching of the medieval church, and had emerged earlier. Indeed, it had its foundation in Aristotle. What was new, apart from Locke’s relating of it to the social contract and conceiving it as pre-political, was the way in which he joined the doctrine of property as a necessary adjunct of personality to the doctrine of property as justified by the labor of its creation or production. That these were actually arguments of quite different orders, and that Locke seemingly made the transition without full awareness of what he was doing, was a source of strength rather than weakness. Moreover, Locke also succeeded, and here with clearer intent, in adopting from the early Christians and the 17th century radicals the doctrine that originally property belonged to all men in common. He transformed this to a doctrine of individual ownership without being obliged to admit that individual ownership resulted in a diminution of the common stock. He even affirmed that it led to an increase of wealth at men’s command, thereby creating a potent foundation for the doctrine of individual capitalist enterprise.

What, then, is Locke’s essential argument? First, he acknowledges that the earth and all therein was given by God to all men in common. He then insists that the gift must have been given for their actual use. God did not give men the earth and its contents simply to contemplate, and, contemplating, to perish. They must make use of it, to enjoy the fruits thereof. This must be done by individuals, since there are no collective hands and mouths. Thus, at the very start, Locke distinguishes between collective common ownership and individual use or enjoyment — an obvious and correct distinction. It is in Locke’s view quite clear that when the individual, the necessary unit of consumption of the goods held in common, actually goes to the trouble of plucking the fruit, he takes it out of the common stock and comes to own it individually, with a right to exclusive consumption. Thus in the state of nature, where indeed all things are common, the right of private property emerges, and must emerge, if men are to enjoy in the only way they can, as individual consumers, what was

given to satisfy the common needs of all. This and nothing more is Locke's labor theory of value: property is that with which man has mixed his labor. Locke actually stated it as follows:

Whatsoever, then, he [i.e., man] removes out of the state that nature hath provided and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property (Chapter 5, Section 27).

This was a dubious step to take, since it rested entirely on the logic of an individualist state of labor, and failed to see the possibility of primitive co-operation or of Communism. It insisted, in short, that initial production was by the individual unaided by his fellows. It insisted also, and much more dangerously, that the conditions of "natural production" were not dependent on society, and that at the beginning values were in no way socially created. Nor does Locke subsequently recognize clearly and directly the reality of socially created values: values arising from growth of population, from a commonly inherited stock of knowledge, and from the institutional framework of a growing society. He insisted rather that the individual owns his own labor, and that others, as rational beings, necessarily and tacitly consent to his consequent ownership of produce. Up to this point, however, Locke was discussing only the fruits of the earth and the primitive taking of them by labor to satisfy needs. It is on the satisfaction of need that he based his doctrine of the limitation of the right of property. For the purpose of property is the enjoyment of man, and no man may properly waste that property by taking more than he needs and letting it spoil. Thus Locke combines with his labor theory of value the concept of effective ability to use. This ties the labor theory of value to the older theory of property as integral to personal existence or expression; and so as an extension or "propriety" of personality. Locke discussed the matter only at the primitive level of a nature essentially uncultivated and did not develop, as Aristotle had developed, the idea of property as a means which must not become an end lest it destroy rather than develop the personality. Nevertheless, the theory of property as goods for consumption for individual benefit is there, and by tying this to the theory of property as the product of labor Locke provided a rationale ultimately for the very different theory of property in producers' goods, or capital.

The other immediate inference that Locke made was that what a man could not use for his immediate needs was left in an untouched and unspoiled state of non-property for use by others for their needs, and in appropriating it they were likewise limited. Had Locke followed out this implication, he would have ended presumably with the duty of men to work sufficiently to satisfy their needs, with a right of property adequate to that purpose, but with a continuous common ownership of the earth and its products, and with the sources of production of capital goods not themselves to be subject to private ownership. Locke, however, now made a very curious though necessary transition in defending the existing property rights of Whig England, and particularly of the Whig landowners. For he argued that, just as men acquired the simple fruits of the earth by the taking of them for their use, so they acquired the land itself by taking it and laboring on it, provided they could themselves also use the produce thereof. Now while this seemed plausible, it certainly changed the meaning of "use," since the production and storing of a crop constituted something essentially different from plucking fruits for immediate consumption. Locke justified this transition on the ground that, in appropriating land, man is still employing his individual labor, and is still himself using the resultant products. He strengthens this position by saying that God enjoined the cultivation of the earth and so, by implication, made it the property of the cultivator. Yet here already Locke changes the meaning of property from what we should today call consumer goods to landed property conceived as capital goods. He justifies this, first, on the ground that in simple society there is land enough for all, though he does not examine the problem of quality of land. Secondly, he argues that diligent tilling of the soil adds to the total products available for human consumption. Thirdly, he insists, departing in curious fashion from the doctrine of a common right to the fruits of nature, that property belongs only to the "industrious and rational" (Section 34). He argues, however, that since such property is still limited by actual individual work, there is enough for all and no harm is done to anyone. Nevertheless, his main emphasis comes to be on the social benefit of cultivation, on producing more and better products, and on storing against later consumption, which he justifies because it brings gains to the community generally, though derived from individual work. It is not the earth, he states, that is

valuable but men's labor: and they are entitled by natural right to the produce thereof. But he recognizes that, as communities grow and wealth increases, mere appropriation is not enough. Locke then argues that men by consent created laws of property and surrendered their common primitive right. To admit this was surely to question the whole foundation of his case; and this becomes even clearer when Locke, pointing out that most things are of short duration, urges that money, made of rare metals or other durable goods, is introduced by men to allow them to exchange perishable goods more readily, and to store their claims, to be used as need arises. He insists that money has its value from the goods it commands, which in the main are made by labor; and he insists, further, that in a complex money economy men have consented, though tacitly, to inequality of possessions and to individuals owning land and other property beyond that which they themselves can work, whose product is beyond their personal consumption. Under such conditions, however, it is government that establishes the rights of property and the laws governing their exercise.

It is interesting here that Locke, starting with the idea of the earth held in common and with individuals getting a right to property in consumers' products from their labor in acquiring them and from their ability and need to consume them, ended with the idea of property as a legal and social matter.) At the very end of his discussion (Section 51), he restated his theory of property with its ethical justification based on God's intent and men's labor. The astounding fact, however, is that a careful reading of Locke's treatment of the subject shows no real connection between his theory of land ownership in a simple society and his doctrine of a legal right of property in a complex one, where the law rests on consent. Save for his comments on the convenience of money and the utility of deferred consumption, Locke developed no theory of civilized property. He in no sense justified the ownership of capital, in land, or otherwise, beyond the ability of the owner to consume its products and to produce them by his own labor; nor did he justify inequality in a world where there is no longer plenty for all.) His doctrine was used, and was intended to justify, individual property as a fundamental right.) Though in his mind that right rests on work and ability to consume, his theory served as the justification of "using" capital effectively or profitably, a very different meaning of "use" from his original one. Locke ended with the technically

correct concept of property as a legal structure, as distinct from physical possession. He also ended with the implication that actual property in an advanced society is largely a social creation and a matter of social concern; and he concluded that it was subject to such regulation of use and of title as the community might consent to. The only just limitation on such regulation was that the community might not take from the individual the right to use his own labor power; and to enjoy — i.e. consume — the products thereof, either directly or through exchange. But this whole teaching, as Locke himself saw, was of little application to a complex society.

Three conclusions may be drawn. First, any legal system of property ownership and control which does not deny men an adequate reward for their labor and goods sufficient to meet their needs may be justified, though this offers no measure either of labor or of need. Secondly, inequalities in individual ownership are held justifiable. Thirdly, this justification rests on law, but is made to appear to rest on man's natural right to the basic necessities. It is surprising that a theory so poorly developed should have proved so generally useful in the defense of the particular institutions of the Whig state, and, beyond that, in the whole rationale of private initiative and profit under the institutions of individualist and competitive industrialism.

THE INFLUENCE OF LOCKE'S 'TWO TREATISES

THAT LOCKE had a tremendous influence on subsequent political thought, as well as on the development of political institutions, is beyond gainsaying. Perhaps for that very reason, the precise influence which he exerted on subsequent political thinkers is singularly hard to measure. Locke's *Treatises* were, indeed, widely read, and, along with Hobbes' *Leviathan*, constitute the major English classics in politics produced by the 17th century. For several generations after Locke and to a lesser extent even well into the 19th century, the *Treatises* gained both in political and philosophical prestige. Moreover, just because Locke was the philosopher of the Whig Revolution and of the Whig state which developed therefrom, institutions of British constitutionalism and Anglo-Saxon liberties became curiously identified with him both in England and abroad, where the British constitutional

system was long the gospel of reform and revolution. Locke symbolized constitutional government, individual liberties, the dependence of the executive on the legislature, the consent of the governed, the rights of the majority, the umpire state and the rules of the game, the right of revolution, the rights of property and the right to its acquisition, "no taxation without representation," moderation in politics, and above all faith in the reasonable nature of man and in the use of reason in political affairs.) That he shared some of these symbols with subsequent thinkers, some of whom were his disciples — Voltaire, Montesquieu, Rousseau, and even Burke — does not diminish his significance. While precursors and contemporaries had developed independently many of his insights, and while Spinoza, for instance, has at least as great a claim to having combined rationalism and popular sovereignty, nevertheless, (it was Locke who came to be regarded, and is still regarded, as the fountainhead of rational liberalism and constitutionalism.)

(In English party politics of the 18th century Tories no less than Whigs functioned and debated on the basis of his analyses. It is, indeed, no accident that the great founder of British conservative doctrine, Edmund Burke, romantic, historically-minded, and an enemy of natural rights, nevertheless was a Whig, and even a liberal Whig. He defended the principles of Lockean constitutionalism, even though with a different temperament and with very different arguments. Similarly, the utilitarianism of Jeremy Bentham and his successors, with its political hedonism and its greatest happiness principle, though it rested on an avowed rejection of natural rights, was essentially a continuation of Locke's consent theory as well as of his theory of government as the protector of rational liberties. Toward the end of the nineteenth century, British Neo-Idealism received its inspiration from sources far removed from Locke, but even its adaptation of Idealism to the British constitutional system, its constitutionalizing of Plato and of Hegel, was a testimony to the vitality of the Lockean tradition. Similarly, the British socialists and the Labor Party have modified the revolutionary teachings of Marx through their acceptance of the Lockean tradition of the rules of the political game. The Fabians, in particular, were clearly the heirs of the Lockean belief in reason, in constitutionalism, and in peaceful accommodation. British constitutional law and British

jurisprudence, from Austin through Dicey to our own day, neatly exhibit the fundamental ideas which Locke had propounded, despite the impact of the historical school and its concern with the ancient institutions of the Saxons.

When all has been said, however, it should not be concluded that the whole course of British political, legal, and constitutional thought was directly produced, or specifically influenced, by Locke's *Two Treatises*. Rather, the essential point to note is that Locke's theories, with all their rationalist constructions, were wedded to actual historical institutions. Hence Locke's political philosophy, which had in itself that mixture of common sense and rational analysis for which he was so celebrated, became an important historical embodiment of British common sense and reason, so that the British constitution is to a large degree Locke institutionalized.

On the Continent the teachings of Locke were combined in France with Montesquieu's independent interpretation of reason and of the British Constitution, and the two together served as the background of the French Enlightenment. Voltaire especially used Locke as the symbol of English freedom from arbitrary government and English respect for property and enterprise. Locke's political influence here, derived from the *Two Treatises*, was merely an aspect of the enormous popularity of his *Essay on Human Understanding* and of his doctrines of education. Locke gave the pioneer impetus and inspiration to rationalism, to environmentalism, and to the search for a social science. This fact heightened rather than decreased his political influence, since, without too nice an examination, there grew up the popular opinion that his political teachings were part and parcel of one all-inclusive philosophical system. The later influence of Locke in France, as well as elsewhere on the Continent, is harder to assess. French constitutionalist doctrine used the watchwords of the French Revolution, but it aimed to achieve an equivalent to English constitutionalism, and so was indirectly Lockean. The same might be said of the different movements in different periods for constitutionalism and liberalism elsewhere on the Continent. Men who knew not Locke's own writings, nevertheless came under the sway of his ideas when they admired and emulated British and American institutions.

As a deliberately used authority, both for the prestige of his name and the substance of his ideas, Locke was, above all, influential in this

country. Locke⁷ himself had been interested in America generally, had used it as an illustration of man's natural condition, and had found it a neat example of free land in developing his theory of property. Moreover, by reason of his connection with Lord Ashley, one of the chief proprietors of Carolina, Locke had been chiefly responsible for the drafting of *The Fundamental Institutions for Carolina*, which, while not generally influential in the development of that colony, nevertheless helped make it one of the more tolerant colonies by reason of the freedom of conscience therein provided.

While the Lockean teachings were known to some of the colonists at an early date, it was only as differences with England developed that they became popular. Ironically enough, Locke was most effectively used when the burden of mercantilist restrictions and government controls due to Whig monopolies became galling to the colonist. Locke was a believer in the mercantilist theory, but as an economist he had developed more adequate theories of the function of money in society, had rejected bullionism, and had been one of the anticipators of the quantity theory of money.) Locke's political doctrine served in America, even more than his unorthodox economic ideas in England,) to combat the economic system of mercantilism which, though it did not originate under the Whigs, was an essential part of the Whig theory and practice of property rights, and hence intimately connected with the constitutional system which Locke had propounded. While the arguments used by the colonists in the pre-revolutionary struggle were numerous, they rested initially on the concept that the colonists were Englishmen abroad, entitled to English rights and to the protections thereof established within England itself. The Yankee leaders in particular, most of whom came late and hesitantly to revolution, conceived of themselves in many ways as American Whigs, that is, substantial persons demanding like consideration with the Whig landed and commercial families. The debate over representation, the analysis of the nature of empire, the discussion of duties and imposts, and of the power of taxation, which culminated in the popular phrase, "No taxation without representation," were all of them essentially Lockean in their genesis. The liberties of Englishmen, the consent of the governed, and the right of property were all at stake, and, long before the colonists developed their own doctrine of the right of revolution, most forcefully stated in Jefferson's *Declara-*

tion, which went beyond Locke, they were using Locke's easy identification of natural rights and rights of Englishmen. While the Revolution produced a new nation, the authority for its creation could be found in Locke, and the struggle leading up to it was fundamentally a struggle against the Whig economy by persons using the political principles of Whiggism in their struggle against the restored monarchy. In this sense the events leading to the Revolution, and the search for inclusion on terms of equality and participation within a new British Empire, were a continuation of the same struggle and arguments in which Locke himself was engaged. (The American Revolution was the classic exhibition of the close union between the Lockeian doctrine of rights and the Lockeian sanction of revolution against arbitrary government.) Other thinkers, to be sure, were used and quoted, but Locke was the dominant and most useful one, since he provided the condemnation of that very state whose principles he had formulated.

Locke was also, along with Montesquieu, a major influence in the making of the Constitution, especially in the demand for a Bill of Rights. While the doctrine of the separation of powers owed more to Montesquieu, and most to colonial practice, Locke at least provided the theoretical foundation for limitations on executive power. While the Federalists were anxious for a strong and independent executive, nevertheless they shared moderately what was felt violently by their opponents: fear of an arbitrary executive power. Indeed, it is not rash to suggest that the Lockeian attack on absolute monarchy, which has been a continuous influence since the days of Washington and the framing of the Constitution, is largely responsible for the American fear of extreme executive power, of centralization, and of bureaucracy. The shadow of the Stuarts, the example of the Whigs, and the doctrine of Locke, have been a recurrent, if not a continuous, undertone in the American attitude toward the presidential power.

(In addition, the American constitutional system is in a profound sense an attempt to institutionalize the Lockeian concern for the protection of rights, particularly that of property.) Consent is necessary to prevent arbitrariness not only on the part of the executive power, but on the part of a tyrannical majority as well. The Constitution makers did not interpret Locke as an absolute majoritarian; rather they found in him warrant both for representative institutions and for balances in government to prevent abuse by representatives.

At the same time the Bill of Rights, as a protection of the citizen's liberties against arbitrariness and oppression, were also basically Lockean.

Finally, though Locke himself had not made provision for the judicial power, and certainly had not provided for judicial supremacy, the American doctrine of judicial review embodies the Lockean emphasis on the judicial function of state authority. Though to Locke the performance of that function was the essential meaning of legislation, and though the early American state systems, with their legislative supremacy followed Locke more directly, the development of judicial review became the American translation into institutional practice of the Lockean ideal. If the state is judicial, then let judges prevail.

Apart from his defense of the right of property, which still continues, Locke was chiefly influential in America before the nineteenth century. Yet he continued to be a power at least to the Civil War. Since the United States has lived under a written constitution, and has been so vastly influenced in its private as well as public life by lawyers, the teachings of Locke have survived in our legal system, even though they have not been so significant recently in our politics. Still today the fear of strong government and of the insecurity of property rights are a continuing testimony to the force of the Lockean tradition.

Locke's teachings concerning property have a special influence independent of his general teachings. His argument that property must be protected by any defensible state provided a justification not only for the Whig state but also for its successor, the nineteenth-century passive policeman state, the corollary of laissez-faire. The right of property became the basis for the whole argument that the state had as its prime function the policing of society, to protect men from the forceful or fraudulent taking from them of what they owned; to secure to them sanctity of contract and the means to enforce it; and, for the rest, to leave them alone to use their property as they willed, and not to regulate or limit ownership in the public interest.

While the original Lockean defense of property had rested on dual grounds — namely, on the right of labor to what it produced and on the ability of man in a state of nature to acquire property provided only he labored — the arguments he employed were soon used in defence of the actual inequalities of property as they existed in civilized

and complex communities.) This position seemed to those who used Locke to be justified by his theories, though his actual conclusions did not follow from his initial premises. Undoubtedly, however, the whole defense of capitalism, of private ownership of both land and industry, owed much to Locke's concept of property as an inherent and natural right of man, even though Locke had himself admitted that in a civilized community municipal law was determinative and property rights were therefore civil and relative. Thus in this country the Lockean theory of property was the special basis of the Federalist position, as it developed through John Marshall, with his argument for the eternally binding character of contracts. It was opposed to the larger concept of the pursuit of happiness championed by Jefferson. The Federalists, partly forced thereto by the opposition, identified freedom to acquire and use property under a system of free enterprise with welfare and happiness. The opposition between this limited conception of fundamental rights and the ethically wider and sociologically more adequate one has continued down to our own days, and the slogan of the New Deal, "Human Rights above Property Rights," was essentially a revival under new conditions and with new prophets of the issue between Jefferson and the Federalists.

On the other hand, the theory of property as the product of labor has also had a curious history. It offered initially a defense of the new entrepreneur of the Industrial Revolution on the ground that it was his work which resulted in his rewards. Combined, as Locke had combined it, with a right of inheritance based on the claims of children on their parents, it constituted a justification of ownership of property even by those who themselves had not worked to produce it. With the growth of co-operation and division of labor in a complex industrial scheme, it became impossible to measure the results of any one individual's labor, while the social nature of the creation of values was increasingly clear. Marx, interpreting the profit system as exploitation, recurred to a Lockean conception of the labor theory of value and made of it an interpretation of industrial society. Marx argued that labor has a right to its full product, to all that it produces, thus eliminating as unjustifiable the claim to rent, to interest, to profit, or to any rewards arising from private ownership of producing instruments, and, indeed, denying the right to such ownership at all. Marx, in short, rejected private inheritance, which was not consistent with

the strict logic of the Lockean theory of property as the product of labor, and argued, though he did not use the Lockean premise of a state of nature, that civilized man is continually in a state of nature, with a right to what he produces. (Thus the Lockean teaching became, by reinterpretation, the basis of the most influential school of socialism.) While latterly Marxists in general abandoned this major thesis as economic science, it has long constituted a popular element in socialist teachings. It tended actually to hide the full implications of socially created values; to prevent adequate development of a wider and more profound ethic of social justice, and, to introduce into socialist doctrine an essentially individualist element, based less on real needs and uses than on individual acquisitiveness.

LOCKE'S CONTEMPORARY INFLUENCE

(THE PRECEDING section has indicated the vast influence of Locke in the development of British government, in the foundation and evolution of the American constitutional system, and in the general history of modern political economy. The question of what, if anything, Locke has to teach us today is not so easily answered. Modern studies in history and sociology and anthropology have eliminated forever the possibility of effective analysis on the basis of a supposed primitive state of nature. The social contract doctrine as an explanation of origins of the state has now long been dead. As a justification of the authority of the state, and of the limits thereon, it has also fallen into disuse, and is inadequate precisely because it implies pre-political and independent individuals. The concept of natural rights similarly has been rejected on the ground that rights are essentially social, to be exercised socially. Natural law does, however, survive, and has in these times undergone a revival, but the explanation and interpretation thereof have little in common with Locke. Modern psychology has undermined the concept of man as primarily a rational animal, while the search for a rational science of society inspired by Locke has at best been disappointing in its outcome. Similarly the individualist theory of property, however ardently espoused in the political arena, seems in its Lockean form rationally indefensible, and institutionally irrelevant; finally, the justification of property as the product of the

labor of the producer, apart from its analytical limitations, is scarcely applicable or meaningful in our present highly complex industrialized world.

(On the institutional side, Locke's attack on executive power derived from the experience of absolute monarchy still haunts us, while his theory of legislative supremacy is widely popular. Yet the conditions of the modern regulative state have rendered these teachings, too, decreasingly applicable.) Nor does his concept of the state as an umpire above the battle have great meaning in our day, with our recognition that it is always finite men who govern, and with our acceptance of the state's positive task, a task not limited to interpreting and adjudicating rights held prior to and independently of it. Locke's doctrine of revolution in its specific terms falls with the Lockeian doctrine of rights, though the general concept of revolution as justified when conditions are intolerable may continue. But even for the revolutionary, the problem today is much more one of the conditions necessary for successful revolution. In short, (nearly all of Locke's specific teachings have ceased to be directly relevant to our times. They have become theoretically indefensible and socially irrelevant. Yet at the same time, by reason of their success, of their embodiment in the institutions and traditions of constitutional democracy and of economic enterprise, they continue to pervade our lives.)

(Although Locke's specific teachings are in the main irrelevant to our actual problems, and hamper rather than aid us, his underlying attitude and his aims, re-interpreted in the light of other ideas and of new situations, may yet have importance. Currently, struggles, both national and international, beget extremism and conflict. Perhaps Locke's chief value and lesson arise from his own moderation and his celebrated common sense. The defender of a revolution in government, and the founding father of a profound revolution in ideas in psychology, in social theory, and in politics, he was nevertheless himself aware of the necessity of social accommodation and of the folly of pushing logic to extremes. He had a profound sense of what was workable, and, if his teaching was frequently lacking in enthusiasm and not marked by the wild nobility of crusading zeal, it revealed a deep sense of the undramatic decencies necessary if men of diverse temperaments are to live together.) (In the field of government itself, his advocacy of constitutionalism went even deeper than the specific

grounds upon which he based it. His defense of individual rights, as he developed it, was not made incompatible with the exercise of political authority. He opposed essentially the all-inclusive and master state, and defended the claims of the individual to a sphere in which he could breathe and function. He defended the right and duty of government to govern, yet insisted that it must ultimately be responsible and responsive, and must avoid arbitrariness. He advocated the use of political power, not political powerlessness. Though defending legislative supremacy, he acknowledged the necessity for discretion, as well as judgment, on the part of the executive. Even in his theory of property he perceived, as those who used him so frequently did not, the positive nature of property law and the right of society to modify the rules governing the acquisition and use of property. He defended a humane tolerance, while defending no less a stable social order.)

(His premises cannot be ours, and we may have to reject the specific institutions he advocated, and, in the field of world organization, have to proceed far beyond his insights. Yet he remains at bottom one of the great defenders of constitutional moderation, toleration, and of government which respects the governed. In this sense he embodies a lasting morality, represents the basic aspiration of our own society, or at least of men of good-will in it, and stands as a permanent critic of those who would impose their particular solutions regardless of the costs in human suffering.)

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September, 1947

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NOTE ON THE TEXTS

During Locke's lifetime three editions of *Two Treatises of Government* were published, the first, anonymously, in 1690, and the two others in 1694 and 1698 respectively. Although each new edition contained many corrections, Locke obviously remained dissatisfied with them, and left a number of notes for further corrections and additions which in some respect have clarified points at issue. These notes were incorporated in later editions, and apparently received a final editorial check-up for the sixth edition, published in 1764, which contained the following advertisement:

The present edition of this book has not only been collated with the first three editions which were published during the author's life, but also has the advantage of his last corrections and improvements, from a copy delivered to him by Mr. Peter Coste, communicated to the editor and now lodged in Christ College, Cambridge.

The edition of 1764 has now been accepted as the author's final version, and has consequently been followed here, except for spelling and punctuation which have been revised in accordance with present-day usage.

Filmer's *Patriarcha* has been included in this edition to provide the complete text of this rarely available work for reference purposes, and, incidentally, to accent the significance of Locke's essay on Civil Government by contrasting the two opposing theories of government which are embodied in *Patriarcha* and Locke's *Second Treatise*. The present edition is an exact reprint of the Chiswell edition of 1680, except for spelling and punctuation which have been modernized.

O.P.

TWO TREATISES OF GOVERNMENT

IN THE FORMER
THE FALSE PRINCIPLES AND FOUNDATION
OF SIR ROBERT FILMER AND HIS FOLLOWERS
ARE DETECTED AND OVERTHROWN:

THE LATTER
IS AN ESSAY CONCERNING
THE TRUE ORIGINAL, EXTENT, AND END
OF CIVIL GOVERNMENT

Salus populi suprema lex esto

PREFACE

READER,

THOU hast here the beginning and end of a discourse concerning government. What fate has otherwise disposed of the papers that should have filled up the middle, and were more than all the rest, it is not worth while to tell thee. These which remain, I hope, are sufficient to establish the throne of our great restorer, our present King William — to make good his title in the consent of the people, which, being our only one of all lawful governments, he has more fully and clearly than any prince in Christendom; and to justify to the world the people of England whose love of their just and natural rights, with their resolution to preserve them, saved the nation when it was on the very brink of slavery and ruin. If these papers have that evidence I flatter myself is to be found in them, there will be no great miss of those which are lost, and my reader may be satisfied without them. For I imagine I shall have neither the time nor inclination to repeat my pains and fill up the wanting part of my answer by tracing Sir Robert again through all the windings and obscurities which are to be met with in the several branches of his wonderful system. The king and body of the nation have since so thoroughly confuted his hypothesis that I suppose nobody hereafter will have either the confidence to appear against our common safety and be again an advocate for slavery, or the weakness to be deceived with contradictions dressed up in a popular style and well turned periods. For if any one will be at the pains himself, in those parts which are here untouched, to strip Sir Robert's discourses of the flourish of doubtful expressions, and endeavour to reduce his words to direct, positive, intelligible propositions, and then compare them one with another, he will quickly be satisfied there was never so much glib nonsense put together in well sounding English. If he think it not worth while to examine his works all through, let him make an experiment in that part where he treats of usurpation, and let him try whether he can, with all his skill make Sir Robert intelligible and consistent with himself or common sense. I should not speak so plainly of a gentleman, long since past answering, had not the pulpit, of late years, publicly owned his

doctrine and made it the current divinity of the times. It is necessary those men, who, taking on them to be teachers, have so dangerously misled others, should be openly shown of what authority this their patriarch is whom they have so blindly followed; that so they may either retract what upon so ill grounds they have vented and cannot be maintained, or else justify those principles which they have preached up for gospel, though they had no better an author than an English courtier. For I should not have writ against Sir Robert, or taken the pains to show his mistakes, inconsistencies, and want of what he so much boasts of and pretends wholly to build on Scripture-proofs, were there not men amongst us who, by crying up his books and espousing his doctrine, save me from the reproach of writing against a dead adversary. They have been so zealous in this point that, if I have done him any wrong, I cannot hope they should spare me. I wish, where they have done the truth and the public wrong, they would be as ready to redress it, and allow its just weight to this reflection, viz., that there cannot be done a greater mischief to prince and people than the propagating wrong notions concerning government; that so at last all times might not have reason to complain of the "drum ecclesiastic." If any one really concerned for truth undertake the confutation of my hypothesis, I promise him either to recant my mistake upon fair conviction or to answer his difficulties. But he must remember two things,

First, That cavilling here and there, at some expression or little incident of my discourse, is not an answer to my book.

Secondly, That I shall not take railing for arguments, nor think either of these worth my notice, though I shall always look on myself as bound to give satisfaction to any one who shall appear to be conscientiously scrupulous in the point, and shall show any just grounds for his scruples.

I have nothing more but to advertise the reader that A, stands for our author, and O. for his *Observations on Hobbes, Milton, etc.* And that a bare quotation of pages always means pages of his *Patriarcha*, edit. 1680.¹

¹ [For the convenience of the reader, the author's quotations of pages of *Patriarcha* in the text have been omitted and replaced by footnotes indicating the corresponding page of *Patriarcha* in the Supplement of this edition.]

THE FIRST TREATISE OF GOVERNMENT

*The False Principles and Foundation
of Sir Robert Filmer and his Followers
are detected and overthrown*

CHAPTER I

1. SLAVERY is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hardly to be conceived that an Englishman, much less a gentleman, should plead for it. And truly I should have taken Sir Robert Filmer's *Patriarcha*, as any other treatise which would persuade all men that they are slaves and ought to be so, for such another exercise of wit as was his who writ the encomium of Nero, rather than for a serious discourse meant in earnest, had not the gravity of the title and epistle, the picture in the front of the book, and the applause that followed it, required me to believe that the author and publisher were both in earnest. I therefore took it into my hands with all the expectation, and read it through with all the attention due to a treatise that made such a noise at its coming abroad, and cannot but confess myself mightily surprised that in a book which was to provide chains for all mankind, I should find nothing but a rope of sand, useful, perhaps, to such whose skill and business it is to raise a dust and would blind the people the better to mislead them, but in truth not of any force to draw those into bondage who have their eyes open and so much sense about them as to consider that chains are but an ill wearing, how much care soever hath been taken to file and polish them.

2. If any one think I take too much liberty in speaking so freely of a man who is the great champion of absolute power, and the idol of those who worship it, I beseech him to make this small allowance for once to one who, even after the reading of Sir Robert's book, cannot but think himself, as the laws allow him, a freeman; and I know no fault it is to do so, unless any one better skilled in the fate of it than I should have it revealed to him that this treatise, which has lain dormant so long,¹ was, when it appeared in the world, to carry, by strength of its arguments, all liberty out of it; and that from thenceforth our author's short model was to be the pattern in the mount and the perfect standard of politics for the future. His system lies in a little compass; it is no more but this:

¹ [Sir Robert Filmer died in 1653. His *Patriarcha*, left in manuscript form, was published in 1680.]

That all government is absolute monarchy.

And the ground he builds on is this:

That no man is born free.

3. In this last age a generation of men has sprung up amongst us that would flatter princes with an opinion that they have a divine right to absolute power, let the laws by which they are constituted and are to govern and the conditions under which they enter upon their authority be what they will, and their engagements to observe them ever so well ratified by solemn oaths and promises. To make way for this doctrine, they have denied mankind a right to natural freedom, whereby they have not only, as much as in them lies, exposed all subjects to the utmost misery of tyranny and oppression, but have also unsettled the titles and shaken the thrones of princes; for they too, by these men's system, except only one, are all born slaves, and by divine right are subjects to Adam's right heir, as if they had designed to make war upon all government and subvert the very foundations of human society to serve their present turn.

4. However, we must believe them upon their own bare words when they tell us: we are all born slaves, and we must continue so; there is no remedy for it. Life and thralldom we entered into together, and can never be quit of the one till we part with the other. Scripture or reason, I am sure, do not anywhere say so, notwithstanding the noise of divine right, as if divine authority hath subjected us to the unlimited will of another. An admirable state of mankind, and that which they have not had wit enough to find out till this latter age! For, however Sir Robert Filmer seems to condemn the novelty of the contrary opinion,² yet I believe it will be hard for him to find any other age or country of the world but this which has asserted monarchy to be *jure divino*. And he confesses³ that "Heyward, Blackwood, Barclay, and others that have bravely vindicated the right of kings in most points, never thought of this, but with one consent admitted the natural liberty and equality of mankind."⁴

² [P. p. 251]

³ [P. p. 252]

⁴ [Sir John Heyward, or Hayward (1560-1627), was an English historian. For a work he wrote on the life of Henry IV, and which he dedicated to the Earl of Essex, he was imprisoned by Elizabeth, who found it displeasing. Freed in 1601, in 1603 he wrote a defense of divine right in the hope of finding the favor of James I. It was reprinted in 1683 under the title, *The Right of Succession*. Adam Blackwood (1539-1603), a Scottish lawyer and historian, was a *protégé* of Mary, Queen of

5. By whom this doctrine came at first to be broached and brought in fashion amongst us, and what sad effects it gave rise to, I leave to historians to relate, or to the memory of those who were contemporaries with Sibthorp and Manwaring⁵ to recollect. My business at present is only to consider what Sir Robert Filmer, who is allowed to have carried this argument farthest, and is supposed to have brought it to perfection, has said in it; for from him every one who would be as fashionable as French was at court has learned, and runs away with this short system of politics, viz., men are not born free and therefore could never have the liberty to choose either governors or forms of government. Princes have their power absolute and by divine right; for slaves could never have a right to compact or consent. Adam was an absolute monarch, and so are all princes ever since.

Scots, in defense of whom, following her death, he wrote an apology, and a denunciation of Knox and Queen Elizabeth. He defended divine right and attacked Buchanan in *Apologia Pro Regibus* (1581). He lived much of his life abroad in France, especially at Poitiers. William Barclay (1546-1608); Scottish legal philosopher. His principal work was *De Regno et Regali Potestate* (1600). This was a defense of divine right, attacking George Buchanan and Jean Boucher. He also wrote *De Potestate Papæ*, in which he denied the right to temporal power of the Papacy. A reply thereto was made by Robert Bellarmine in his *De Potestate Summi Pontificis in Rebus Temporalis* (1610). Bellarmine, an Italian theologian and controversialist (1542-1612), was beatified in 1923.]

⁵[Robert Sibthorp, or Sybthorpe, died in 1662, was a Royalist divine, educated at Trinity College, Cambridge. In a sermon at Northampton, where he held a living, he argued passive obedience to rulers and the right of the monarch to tax. This was published in 1627 as *Apostolic Obedience*. He was made Chaplain in ordinary to the King, whom he joined at Oxford in 1643. As a result his livings were sequestered. They were given back to him at the Restoration. Roger Manwering, or Maynwering (1590-1653) Bishop of St. David's; he studied at Oxford. He defended the prerogative in the field of taxation in two celebrated sermons. As a result, he was censured, imprisoned, and fined by Parliament. He was later pardoned by the King, but was again imprisoned by the Long Parliament. He spent his last years in obscure poverty.]

CHAPTER II

OF PATERNAL AND REGAL POWER

6. SIR ROBERT FILMER'S great position is that "men are not naturally free." This is the foundation on which his absolute monarchy stands, and from which it erects itself to an height that its power is above every power, *caput inter nubila*; so high above all earthly and human things that thought can scarce reach it, that promises and oaths which tie the infinite Deity cannot confine it. But if this foundation fails, all his fabric falls with it, and governments must be left again to the old way of being made by contrivance and the consent of men (*ἀνθρωπινῇ κτίσει*) making use of their reason to unite together in society. To prove this grand position of his he tells us: "Men are born in subjection to their parents,"¹ and therefore cannot be free. And this authority of parents he calls "royal authority,"² "fatherly authority," "right of fatherhood."³ One would have thought he would in the beginning of such a work as this, on which was to depend the authority of princes and the obedience of subjects, have told us expressly what the fatherly authority is, have defined it, though not limited it, because in some other treatises of his, he tells us it is unlimited and unlimitable.⁴ He should at least have given us such an account of it that we might have an entire notion of this fatherhood or fatherly authority whenever it came in our way in his writings — this I expected to have found in the first chapter of his *Patriarcha*. But instead thereof having (1) *en passant*, made his obeisance to the *arcana imperii*;⁵ (2) made his compliment to the "rights and liberties of this or any other nation,"⁶ which he is going presently to null and destroy; and (3) made his leg to those learned men who did not see so far into the matter as himself,⁷ he comes to fall on Bellarmine,⁸ and by a victory over him⁹ establishes his "fatherly

¹ [P. p. 255]² [P. p. 255]³ [P. p. 258]⁴ "In giants and gifts that have their original from God or nature, as the power of the father hath, no inferior power of man can limit nor shake any law of prescription against them." (O. p. 158)⁵ "The Scripture teaches that supreme power was originally in the father, without any limitation" (O. p. 245)⁶ [P. p. 252]⁷ [P. p. 252]⁸ [P. p. 253]⁹ [P. p. 253]⁹ [Cf. note NO. 4, p. 8.]

authority" beyond any question. Bellarmine being routed by his own confession,¹⁰ the day is clear got, and there is no more need of any forces; for having done that, I observe not that he states the question or rallies up any arguments to make good his opinion, but rather tells us the story, as he thinks fit, of this strange kind of domineering phantom called the "fatherhood," which, whoever could catch, presently got empire and unlimited absolute power. He acquaints us how this fatherhood began in Adam, continued its course, and kept the world in order all the time of the patriarchs till the Flood; got out of the ark with Noah and his sons, made and supported all the kings of the earth till the captivity of the Israelites in Egypt; and then the poor fatherhood was under hatches till "God, by giving the Israelites kings, re-established the ancient and prime right of the lineal succession in paternal government." This is his business from pp. 12 to 19.¹¹ And then, obviating an objection and clearing a difficulty or two with one half-reason, "to confirm the natural right of regal power,"¹² he ends the first chapter. I hope it is no injury to call an half-quotation an half-reason; for God says, "Honour thy father and mother," but our author contents himself with half, leaves out "thy mother" quite, as little serviceable to his purpose. But of that more in another place.

7. I do not think our author so little skilled in the way of writing discourses of this nature, nor so careless of the point in hand, that he by oversight commits the fault that he himself, in his *Anarchy of a Mixed Monarchy*, p. 239,¹³ objects to Mr. Hunton in these words: "Where first I charge the author that he hath not given us any definition or description of monarchy in general; for by the rules of method he should have first defined." And by the like rule of method, Sir Robert should have told us what his "fatherhood" or "fatherly authority" is, before he had told us in whom it was to be found, and talked so much of it. But, perhaps, Sir Robert found that his fatherly authority, this power of fathers and of kings — for he makes them both the same¹⁴ — would make a very odd and frightful figure, and very disagreeing

¹⁰ [P. p. 255]¹¹ [P. pp. 255-258]¹² [P. p. 260]

¹³ [This work, published in 1648, was, as its title suggests, a plea for absolute monarchy, and an attack on the concept of a mixed monarchy, an idea itself deriving from the balanced commonwealth propounded in the Ancient World by Cicero, and subsequently adapted as a criticism of the absolutist monarchist state.]

¹⁴ [P. p. 260]

with what either children imagine of their parents or subjects of their kings, if he should have given us the whole draught together in that gigantic form he had painted it in his own fancy; and, therefore, like a wary physician, when he would have his patient swallow some harsh or corrosive liquor, he mingles it with a large quantity of that which may dilute it that the scattered parts may go down with less feeling and cause less aversion.

8. Let us then endeavour to find what account he gives of this fatherly authority, as it lies scattered in the several parts of his writings. And first, as it was vested in Adam, he says:

Not only Adam, but the succeeding patriarchs, had, by right of fatherhood, royal authority over their children.¹⁵ . . . This lordship which Adam by command had over the whole world, and by right descending from him the patriarchs did enjoy, was as large and ample as the absolute dominion of any monarch, which has been since the Creation.¹⁶ . . . Dominion of life and death, making war, and concluding peace.¹⁷ . . . Adam and the patriarchs had absolute power of life and death.¹⁸ . . . Kings, in the rights of parents, succeed to the exercise of supreme jurisdiction.¹⁹ . . . As kingly power is by the law of God, so it hath no inferior law to limit it; Adam was lord of all.²⁰ . . . The father of a family governs by no other law than by his own will.²¹ . . . The superiority of princes is above laws.²² . . . The unlimited jurisdiction of kings is so amply described by Samuel.²³ . . . Kings are above the laws.²⁴

And to this purpose see a great deal more, which our author delivers in Bodin's words:

It is certain that all laws, privileges, and grants of princes have no force but during their life, if they be not ratified by the express consent or by sufferance of the prince following, especially privileges (*O. p. 279*). . . . The reason, why laws have been also made by kings was this: When kings were either busied with wars, or distracted with public cares, so that every private man could not have access to their persons to learn their wills and pleasure, then were laws of necessity invented, that so every particular subject might find his prince's pleasure deciphered unto him in the tables of his laws.²⁵ . . . In a monarchy the king must by necessity be above the laws.²⁶ . . . A perfect kingdom is that wherein the king rules all things according to his own will.²⁷ . . . Neither common nor

¹⁵ [*P. p. 255*]¹⁶ [*P. p. 255*]¹⁷ [*P. p. 255*]¹⁸ [*P. p. 264*]¹⁹ [*P. p. 258*]²⁰ [*P. p. 281*]²¹ [*P. p. 281*]²² [*P. p. 282*]²³ [*P. p. 282*]²⁴ [*P. p. 287*]²⁵ [*P. p. 287*]²⁶ [*P. p. 290*]²⁷ [*P. p. 290*]

statute laws are or can be any diminution of that general power which kings have over their people by right of fatherhood.²⁸ . . . Adam was the father, king, and lord over his family: a son, a subject, and a servant, or slave, were one and the same thing at first. The father had power to dispose or sell his children or servants; whence we find that in the first reckoning up of goods in Scripture the man-servant and the maid-servant are numbered among the possessions and substance of the owner, as other goods were (*O. Pref.*) . . . God hath also given to the father a right or liberty to alien his power over his children to any other; whence we find the sale and gift of children to have been much in use in the beginning of the world, when men had their servants for a possession and inheritance, as well as other goods; whereupon we find the power of castrating and making eunuchs much in use in old times (*O. p. 155*) . . . Law is nothing else but the will of him that hath the power of the supreme father (*O. p. 223*) . . . It was God's ordinance that the supremacy should be unlimited in Adam, and as large as all the acts of his will; and as in him, so in all others that have supreme power (*O. p. 245*).

9. I have been fain to trouble my reader with these several quotations in our author's own words, that in them might be seen his own description of his fatherly authority, as it lies scattered up and down in his writings, which he supposes was first vested in Adam, and by right belongs to all princes ever since. This fatherly authority then, or right of fatherhood, in our author's sense, is a divine unalterable right of sovereignty whereby a father or a prince hath an absolute, arbitrary, unlimited, and unlimitable power over the lives, liberties, and estates of his children and subjects; so that he may take or alienate their estates, sell, castrate, or use their persons as he pleases — they being all his slaves, and he lord or proprietor of everything, and his unbounded will their law.

10. Our author, having placed such a mighty power in Adam, and upon that supposition founded all government and all power of princes, it is reasonable to expect that he should have proved this with arguments clear and evident, suitable to the weightiness of the cause; that, since men had nothing else left them, they might in slavery have such undeniable proofs of its necessity, that their consciences might be convinced and oblige them to submit peaceably to that absolute dominion which their governors had a right to exercise over them. Without this, what good could our author do, or pretend to do, by erecting such an unlimited

²⁸ [*P. p. 297*]

power, but flatter the natural vanity and ambition of men, too apt of itself to grow and increase with the possession of any power? And by persuading those who, by the consent of their fellow men, are advanced to great but limited degrees of it that, by that part which is given them, they have a right to all that was not so, and therefore may do what they please, because they have authority to do more than others, and so tempt them to do what is neither for their own nor the good of those under their care, whereby great mischiefs cannot but follow.

11. The sovereignty of Adam being that on which as a sure basis our author builds his mighty absolute monarchy, I expected that, in his *Patriarcha*, this his main supposition would have been proved and established with all that evidence of arguments that such a fundamental tenet required, and that this on which the great stress of the business depends would have been made out with reasons sufficient to justify the confidence with which it was assumed. But in all that treatise I could find very little tending that way; the thing is there so taken for granted — without proof — that I could scarce believe myself when, upon attentive reading that treatise, I found there so mighty a structure raised upon the bare supposition of this foundation. For it is scarce credible that in a discourse where he pretends to confute the erroneous principle of man's natural freedom, he should do it by a bare supposition of Adam's authority, without offering any proof for that authority. Indeed, he confidently says that Adam had "royal authority,"²⁰ "absolute lordship and dominion of life and death,"²⁰ "an universal monarchy,"²¹ "absolute power of life and death."²² He is very frequent in such assertions; but, what is strange, in all his whole *Patriarcha* I find not one pretence of a reason to establish this his great foundation of government, not anything that looks like an argument but these words: "To confirm this natural right of legal power, we find in the Decalogue that the law which enjoins obedience to kings is delivered in the terms 'Honour thy father,' as if all power were originally in the father." And why may I not add as well, that in the Decalogue the law that enjoins obedience to queens is delivered in the terms of "Honour thy mother," as if all power were originally in the mother? The argument, as Sir Robert puts it, will hold as well for one as the other, but of this more in its due place.

12. All that I take notice of here is that this is all our author says

²⁰ [P. p. 255]

²⁰ [P. p. 255]

²¹ [P. p. 263]

²² [P. p. 264]

in his first or any of the following chapters to prove the absolute power of Adam, which is his great principle; and yet, as if he had there settled it upon sure demonstration, he begins his second chapter with these words: "By conferring these proofs and reasons drawn from the authority of the Scripture." Where those "proofs and reasons" for Adam's sovereignty are, bating that of "Honour thy father" above-mentioned, I confess I cannot find, unless what he says, "In these words we have an evident confession" — viz., of Bellarmine—"that creation made man prince of his posterity,"⁸³ must be taken for proofs and reasons drawn from Scripture, or for any sort of proof at all, though from thence by a new way of inference, in the words immediately following, he concludes the "royal authority of Adam" sufficiently settled in him.

13. If he has in that chapter, or anywhere in the whole treatise, given any other proofs of Adam's royal authority other than by often repeating it, which among some men goes for argument, I desire anybody for him to show me the place and page, that I may be convinced of my mistake and acknowledge my oversight. If no such arguments are to be found, I beseech those men who have so much cried up this book to consider whether they do not give the world cause to suspect that it is not the force of reason and argument that makes them for absolute monarchy, but some other by-interest, and therefore are resolved to applaud any author that writes in favour of this doctrine, whether he support it with reason or no. But I hope they do not expect that rational and indifferent men should be brought over to their opinion, because this their great doctor of it, in a discourse made on purpose to set up the absolute monarchical power of Adam in opposition to the natural freedom of mankind, has said so little to prove it, from whence it is rather naturally to be concluded that there is little to be said.

14. But that I might omit no care to inform myself in our author's full sense, I consulted his *Observations on Aristotle, Hobbes, etc.*, to see whether in disputing with others he made use of any arguments for this his darling tenet of Adam's sovereignty; since in his treatise of the *Natural Power of Kings* he hath been so sparing of them. In his *Observations on Mr. Hobbes's "Leviathan,"* I think he has put in short all those arguments for it together, which in his writings I find him anywhere to make use of; his words are these:

⁸³ [P. p. 255]

If God created only Adam, and of a piece of him made the woman, and if by generation from them two, as parts of them, all mankind be propagated, if also God gave to Adam not only the dominion over the woman and the children that issue from them, but also over all the earth to subdue it, and over all the creatures on it, so that as long as Adam lived, no man could claim or enjoy anything but by donation, assignation, or permission from him, I wonder, etc. (O. p. 165).

Here we have the sum of all his arguments for Adam's sovereignty and against natural freedom, which I find up and down in his other treatises; and they are these following: "God's creation of Adam," "the dominion He gave him over Eve," and "the dominion he had as father over his children," all which I shall particularly consider.

CHAPTER III

OF ADAM'S TITLE TO SOVEREIGNTY BY CREATION

15. SIR ROBERT in his preface to his *Observations on Aristotle's "Politics"*¹ tells us, "A natural freedom of mankind cannot be supposed without the denial of the creation of Adam"; but how Adam's being created, which was nothing but his receiving a being immediately from Omnipotency and the hand of God, gave Adam a sovereignty over anything, I cannot see, nor, consequently, understand how a supposition of natural freedom is a denial of Adam's creation, and would be glad anybody else — since our author did not vouchsafe us the favour — would make it out for him; for I find no difficulty to suppose the freedom of mankind, though I have always believed the creation of Adam. He was created or began to exist by God's immediate power, without the intervention of parents or the pre-existence of any of the same species to beget him, when it pleased God he should; and so did the lion, the king of beasts, before him, by the same creating power of God: and if bare existence by that power, and in that way, will give² dominion

¹[In this work Filmer endeavoured, with dubious success, to found his doctrine of monarchy on Aristotle, and more especially argued for a limited citizenship enjoying leisure and developing culture.]

without any more ado, our author by this argument will make the lion have as good a title to it as he, and certainly the ancients. No; for Adam had his title "by the appointment of God," says our author in another place. Then bare creation gave him not dominion, and one might have supposed mankind free without the denying the creation of Adam, since it was God's *appointment* made him monarch.

16. But let us see how he puts his creation and this appointment together:

By the appointment of God, as soon as Adam was created, he was monarch of the world, though he had no subjects; for though there could not be actual government till there were subjects, yet by the right of nature it was due to Adam to be governor of his posterity; though not in act, yet at least in habit, Adam was a king from his creation.

I wish he had told us here what he meant by "God's appointment." For whatsoever providence orders, or the law of nature directs, or positive revelation declares, may be said to be by God's appointment; but I suppose it cannot be meant here in the first sense, *i.e.*, "by providence"; because that would be to say no more but that as soon as Adam was created, he was *de facto* monarch, because by right of nature it was due to Adam to be governor of his posterity. But he could not *de facto* be by providence constituted the governor of the world at a time when there was actually no government, no subjects to be governed, which our author here confesses. "Monarch of the world" is also differently used by our author; for sometimes he means by it a "proprietor of all the world," exclusive of the rest of mankind, and thus he does in the same page of his preface before cited:

Adam being commanded to multiply and people the earth and subdue it, and having dominion given him over all creatures, was thereby the monarch of the whole world; none of his posterity had any right to possess anything but by his grant or permission, or by succession from him.

(2.) Let us understand then by "monarch," *proprietor of the world*, and "by appointment," *God's actual donation and revealed positive grant made to Adam* (Gen. i. 28.), as we see Sir Robert himself does in this parallel place; and then his argument will stand thus: "By the positive grant of God, as soon as Adam was created, he was proprietor of the world, because by the right of nature it was due to Adam to be governor

of his posterity." In which way of arguing there are two manifest falsehoods. First, it is false that God made that grant to Adam as soon as he was created, since, though it stands in the text immediately after his creation, yet it is plain it could not be spoken to Adam till after Eve was made and brought to him; and how then could he be "monarch by appointment as soon as created," especially since he calls, if I mistake not, that which God says to Eve (Gen. iii. 16) "the original grant of government," which not being till after the Fall, when Adam was somewhat, at least in time, and very much distant in condition, from his creation, I cannot see how our author can say, in this sense, that, "by God's appointment, as soon as Adam was created, he was monarch of the world." Secondly, were it true that God's actual donation "appointed Adam monarch of the world as soon as he was created," yet the reason here given for it would not prove it; but it would always be a false inference that God, by a positive donation, "appointed Adam monarch of the world, because, by right of nature, it was due to Adam to be governor of his posterity"; for having given him the right of government by nature, there was no need of a positive donation, at least it will never be a proof of such a donation.

17. On the other side the matter will not be much mended if we understand by "God's appointment," *the law of nature*—though it be a pretty harsh expression for it in this place—and by "monarch of the world," *sovereign ruler of mankind*; for then the sentence under consideration must run thus: "By the law of nature, as soon as Adam was created he was governor of mankind, for by right of nature it was due to Adam to be governor of his posterity"; which amounts to this: he was governor by right of nature because he was governor by right of nature. But supposing we should grant that a man is by nature governor of his children, Adam could not hereby be monarch as soon as created; for this right of nature being founded in his being their father, how Adam could have a "natural right" to be governor before he was a father, when by being a father only he had that right, is, methinks, hard to conceive, unless he would have him to be a father before he was a father and have a title before he had it.

18. To this foreseen objection, our author answers very logically: "He was governor in habit and not in act"—a very pretty way of being governor without government, a father without children, and a king without subjects. And thus Sir Robert was an author before he wrote

his book; not in *act*, it is true, but in *habit*; for when he had once published it, it was due to him by the right of nature to be an author, as much as it was to Adam to be governor of his children when he had begot them; and if to be such a monarch of the world — an absolute monarch in habit, but not in act — will serve the turn, I should not much envy it to any of Sir Robert's friends that he thought fit graciously to bestow it upon; though even this of "act" and "habit," if it signified anything but our author's skill in distinctions, be not to his purpose in this place. For the question is not here about Adam's actual exercise of government but actually having a title to be governor. Government, says our author, was "due to Adam by the right of nature." What is this right of nature? A right fathers have over their children by begetting them; "*generatione jus acquiritur parentibus in liberos*," says our author out of Grotius, *De J. B. P. L.* 2. C. 5. S. 1.² The right then follows the begetting as arising from it; so that, according to this way of reasoning or distinguishing of our author, Adam, as soon as he was created, had a title only in habit, and not in act, which, in plain English, is, he had actually no title at all.

19. To speak less learnedly and more intelligibly, one may say of Adam, he was in a possibility of being governor, since it was possible he might beget children, and thereby acquire that right of nature, be it what it will, to govern them that accrues from thence. But what connection has this with Adam's creation, to make him say that "as soon as he was created, he was monarch of the world"? For it may as well be said of Noah that as soon as he was born he was monarch of the world, since he was in possibility — which in our author's sense is enough to make a monarch "a monarch in habit" — to outlive all mankind but his own posterity. What such necessary connection there is betwixt Adam's creation and his right to government, so that a "natural freedom of mankind cannot be supposed without the denial of the creation of Adam," I confess for my part I do not see; nor how those words, "by

² [Hugo de Groot (1583-1645) was a Dutch jurist and political thinker. Locke refers here to his masterwork, *De Jure Belli Ac Pacis* ("The Law of War and Peace"), first published in 1625 and republished in a revised edition in 1631. It is one of the basic works in the foundation of international law. Grotius was a defender of the doctrine of sovereignty and one of the chief exponents of the claims, as well as of the value of the monarchical nationalist state. He wrote also more technical works in the field of international law, including his defense of the freedom of the seas against Selden — cf. note no. 1, p. 21.]

the appointment, etc." (*O. p. 254*), however explained, can be put together to make any tolerable sense, at least to establish this position with which they end, viz., "Adam was a king from his creation"—a king, says our author, "not in act but in habit," *i.e.*, actually no king at all.

20. I fear I have tired my reader's patience by dwelling longer on this passage than the weightiness of any argument in it seems to require; but I have unavoidably been engaged in it by our author's way of writing who, huddling several suppositions together and that in doubtful and general terms, makes such a medley and confusion that it is impossible to show his mistakes without examining the several senses wherein his words may be taken, and without seeing how, in any of these various meanings, they will consist together and have any truth in them; for in this present passage before us, how can any one argue against this position of his, that "Adam was a king from his creation," unless one examine whether the words "from his creation" be to be taken, as they may, for the time of the commencement of his government, as the foregoing words import, "as soon as he was created he was monarch"; or for the cause of it, as he says, "creation made man prince of his posterity"?³ How, further, can one judge of the truth of his being thus king till one has examined whether king be to be taken, as the words in the beginning of this passage would persuade, on supposition of his "private dominion," which was by God's positive grant "monarch of the world by appointment"; or king on supposition of his "fatherly power" over his offspring, which was by nature "due by the right of nature"—whether, I say, king be to be taken in both, or one only of these two senses, or in neither of them, but only this, that creation made him prince in a way different from both the other? For though this assertion that "Adam was king from his creation" be true in no sense, yet it stands here as an evident conclusion drawn from the preceding words, though in truth it be but a bare assertion joined to other assertions of the same kind, which, confidently put together in words of undetermined and dubious meaning, look like a sort of arguing, when there is indeed neither proof nor connexion—a way very familiar with our author, of which, having given the reader a taste here, I shall, as much as the argument will permit me, avoid touching on hereafter, and should not have done it here, were it not to let the world see how incoherences in

³ [*P. p. 255*]

matter and suppositions without proofs, put handsomely together in good words and a plausible style, are apt to pass for strong reason and good sense till they come to be looked into with attention.

CHAPTER IV

OF ADAM'S TITLE TO SOVEREIGNTY BY DONATION (*Gen. i. 28*)

21. HAVING AT LAST got through the foregoing passage where we have been so long detained, not by the force of arguments and opposition, but by the intricacy of the words and the doubtfulness of the meaning, let us go on to his next argument for Adam's sovereignty. Our author tells us in the words of Mr. Selden ¹ that "Adam by donation from God (*Gen. i. 28*) was made the general lord of all things, not without such a private dominion to himself as without his grant did exclude his children. This determination of Mr. Selden," says our author, "is consonant to the history of the Bible and natural reason" (*O. p. 210*). And in his Preface to his *Observations on Aristotle*, he says thus:

The first government in the world was monarchical in the father of all flesh, Adam, being commanded to multiply and people the earth and to subdue it and having dominion given him over all creatures, was thereby the monarch of the whole world. None of his posterity had any right to possess anything but by his grant or permission, or by succession from him. "The earth," saith the Psalmist, "hath He given to the children of men," which shows the title comes from fatherhood.

22. Before I examine this argument and the text on which it is founded, it is necessary to desire the reader to observe that our author,

¹ [John Selden (1584-1654), jurist, political theorist, and statesman, was concerned with constitutionalism as against the use of prerogative. He is known especially for his *Mare Clausum* (1635) in which he attempted to refute Grotius' work on the *Mare Liberum*, and to argue England's claim to dominion in the Channel and North Sea. In his *History of Titles* (1618), he argued that these were not a divine institution. On questions of constitutionalism, his best known works were *Privileges of the Baronage in England* (1642) and a later work, *Judicature in Parliament* (1681). A celebrated conversationalist, some of his sayings were collected by his secretary, Richard Milburn, and published in 1689 as *Table Talk*.]

according to his usual method, begins in one sense and concludes in another. He begins here with "Adam's propriety or private dominion by donation," and his conclusion is: "which shows the title comes from fatherhood."

23. But let us see the argument. The words of the text are these:

And God blessed them, and God said unto them, be fruitful and multiply, and replenish the earth and subdue it, and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth" (Gen. i. 28),

from whence our author concludes that "Adam, having here dominion given him over all creatures, was thereby the monarch of the whole world," whereby must be meant that either this grant of God gave Adam property, or, as our author calls it, "private dominion" over the earth and all inferior or irrational creatures, and so, consequently, that he was thereby monarch; or, secondly, that it gave him rule and dominion over all earthly creatures whatsoever, and thereby over his children, and so he was monarch; for, as Mr. Selden has properly worded it, "Adam was made general lord of all things," one may very clearly understand him that he means nothing to be granted to Adam here but property, and, therefore, he says not one word of Adam's "monarchy." But our author says, "Adam was hereby monarch of the world," which, properly speaking, signifies sovereign ruler of all the men in the world; and so Adam, by this grant, must be constituted such a ruler. If our author means otherwise, he might with much clearness have said that "Adam was hereby *proprietor* of the whole world." But he begs your pardon in that point; clear, distinct speaking not serving everywhere to his purpose, you must not expect it in him as in Mr. Selden, or other such writers.

24. In opposition, therefore, to our author's doctrine, that "Adam was monarch of the whole world," founded on this place, I shall show:

First, That by this grant (Gen. i. 28) God gave no immediate power to Adam over men, over his children — over those of his own species; and so he was not made ruler or "monarch" by this charter.

Secondly, That by this grant God gave him not private dominion over the inferior creatures but right in common with all mankind, so neither was he monarch upon the account of the property here given him.

25. (1.) That this donation (Gen. i. 28) gave Adam no power over men will appear if we consider the words of it. For since all positive

grants convey no more than the express words they are made in will carry, let us see which of them here will comprehend "mankind" or "Adam's posterity"; and those, I imagine, if any, must be these: "every living thing that moveth." The words in Hebrew are *חיה הרמש*, i.e., *bestiam replantem*, of which words the Scripture itself is the best interpreter. God having created the fishes and fowls the fifth day, the beginning of the sixth, he creates the irrational inhabitants of the dry land, which (vs. 24) are described in these words: "Let the earth bring forth the living creature after his kind, cattle and creeping things, and beasts of the earth after his kind," and (vs. 2): "And God made the beasts of the earth after his kind, and cattle after their kind, and everything that creepeth on the earth after his kind." Here, in the creation of the bruté inhabitants of the earth, He first speaks of them all under one general name of "living creatures" and then afterwards divides them into three ranks: (1.) Cattle or such creatures as were or might be tame, and so be the private possession of particular men; (2.) *חיה*, which in our Bible, vss. 24-25, is translated "beasts" and by the Septuagint *θηρία* ("wild beasts") and is the same word that here in our text (vs. 28), where we have this great charter to Adam, is translated "living things," and is also the same word used Gen. ix. 2, where this grant is renewed to Noah, and there likewise translated "beast." (3.) The third rank were the creeping animals, which (vss. 24-25) are comprised under the word, *רמש*, the same that is used here (vs. 28) and is translated "moving," but in the former verses, "creeping," and by the Septuagint in all these places *ἐρπετὰ*, or reptiles, from whence it appears that the words which we translate here in God's donation (vs. 28): "living creatures moving," are the same which in the history of the Creation (vss. 24-25) signify two ranks of terrestrial creatures, viz., wild beasts and reptiles, and are so understood by the Septuagint.

26. When God had made the irrational animals of the world, divided into three kinds, from the places of their habitation, viz., fishes of the sea, fowls of the air, and living creatures of the earth, and these again into cattle, wild beasts, and reptiles, He considers of making man, and the dominion he should have over the terrestrial world (vs. 26), and then he reckons up the inhabitants of these three kingdoms, but in the terrestrial leaves out the second rank, *חיה*, or wild beasts; but here (vs. 28), where he actually exercises this design and gives him this dominion, the text mentions the "fishes of the sea," and "fowls of the

air," and the "terrestrial creatures" in the words that signify the "wild beasts" and "reptiles," though translated "living thing that moveth," leaving out cattle. In both which places, though the word that signifies "wild beasts" be omitted in one, and that which signifies "cattle" in the other, yet, since God certainly executed in one place what he declares he designed in the other, we cannot but understand the same in both places, and have here only an account how the terrestrial irrational animals which were already created and reckoned up at their creation in three distinct ranks of cattle, wild beasts, and reptiles, were here (vs. 28) actually put under the dominion of man, as they were designed (vs. 26). Nor do these words contain in them the least appearance of anything that can be wrested to signify God's giving to one man dominion over another, to Adam over his posterity.

27. And this further appears from Gen. ix. 2, where God renewing this charter to Noah and his sons, He gives them dominion over the fowls of the air, and the fishes of the sea, and the terrestrial creatures, expressed by *חיה רמש*, wild beasts and reptiles, the same words that in the text before us (Gen. i. 28) are translated "every moving [living] thing that moveth on the earth," which by no means can comprehend man, the grant being made to Noah and his sons, all the men then living, and not to one part of men over another which is yet more evident from the very next words (vs. 3), where God gives every *רמש*, "every moving thing" — the very words used ch. i. 28 — to them for food. By all which it is plain that God's donation to Adam (ch. i. 28), and his designation (vs. 26), and his grant again to Noah and his sons, refer to, and contain in them, neither more nor less than the works of the Creation the fifth day and the beginning of the sixth, as they are set down from the twentieth to the twenty-sixth verses, inclusively, of the first chapter, and so comprehend all the species of irrational animals of the terraqueous globe, though all the words whereby they are expressed in the history of their creation are nowhere used in any of the following grants, but some of them omitted in one, and some in another; from whence I think it is past all doubt that man cannot be comprehended in this grant, nor any dominion over those of his own species be conveyed to Adam. All the terrestrial irrational creatures are enumerated at their creation (vs. 25) under the names: "beasts of the earth, cattle, and creeping things"; but man, being not then created, was not contained under any of those names; and therefore, whether we understand the

Hebrew words right or no, they cannot be supposed to comprehend man in the very same history, and the very next verses following, especially since that Hebrew word, *שׂרָר*, which, if any, in this donation to Adam (ch. i. 28) must comprehend man, is so plainly used in contradistinction to him, as Gen. vi. 20; vii. 14, 21, 23; viii. 17, 19. And if God made all mankind slaves to Adam and his heirs, by giving Adam dominion over "every living thing that moveth on the earth" (ch. i. 28), as our author would have it, methinks Sir Robert should have carried his monarchical power one step higher and satisfied the world that princes might eat their subjects too, since God gave as full power to Noah and his heirs (ch. ix. 2) to eat "every living thing that moveth" as he did to Adam to have dominion over them, the Hebrew word in both places being the same.

28. David, who might be supposed to understand the donation of God in this text and the right of kings, too, as well as our author in his comment on this place, as the learned and judicious Ainsworth² calls it, in the Eighth Psalm, finds here no such charter of monarchical power. His words are: "Thou hast made him"—*i.e.*, man, the son of man—"a little lower than the angels; Thou madest him to have dominion over the works of thy hands; Thou hast put all things under his feet, all sheep and oxen, and the beasts of the field, and fowls of the air, and fish of the sea, and whatsoever passeth through the paths of the sea." In which words, if anyone can find out that there is meant any monarchical power of one man over another, but only the dominion of the whole species of mankind over the inferior species of creatures, he may, for aught I know, deserve to be one of Sir Robert's monarchs in habit, for the rareness of the discovery. And by this time I hope it is evident that He that gave "dominion over every living thing that moveth on the earth," gave Adam no monarchical power over those of his own species, which will yet appear more fully in the next thing I am to show.

29. (2.) Whatever God gave by the words of this grant (Gen. i. 28), it was not to Adam in particular, exclusive of all other men; whatever dominion he had thereby, it was not a private dominion but a dominion in common with the rest of mankind. That this donation was not made in particular to Adam appears evidently from the words of the text, it being made to more than one; for it was spoken in the plural number: God blessed "them," and said unto "them": have dominion.

² [Henry Ainsworth (1571-1623), English clergyman and scholar.]

God says unto Adam and Eve: have dominion; thereby, says our author, "Adam was monarch of the world"; but the grant being to "them," *i.e.*, spoken to Eve also — as many interpreters think with reason that these words were not spoken till Adam had his wife — must not she thereby be lady, as well as he lord, of the world? If it be said that Eve was subjected to Adam, it seems she was not so subjected to him as to hinder her dominion over the creatures, or property in them; for shall we say that God ever made a joint grant to two, and one only was to have the benefit of it?

30. But, perhaps, it will be said Eve was not made till afterward; grant it so, what advantage will our author get by it? The text will be only the more directly against him, and show that God, in this donation, gave the world to mankind in common, and not to Adam in particular. The word "them" in the text must include the species of man, for it is certain "them" can by no means signify Adam *alone*. In the twenty-sixth verse, where God declares his intention to give this dominion, it is plain he meant that he would make a species of creatures that should have dominion over the other species of this terrestrial globe. The words are: "And God said, let us make man in our image, after our likeness, and let *them* have dominion over the fish, etc." "They," then, were to have dominion. Who? Even those who were to have the image of God, the individuals of that species of man that He was going to make; for that "them" should signify Adam singly, exclusive of the rest that should be in the world with him, is against both Scripture and all reason; and it cannot possibly be made sense, if "man" in the former part of the verse do not signify the same with "them" in the latter; only "man" there, as is usual, is taken for the species, and "them" the individuals of that species; and we have a reason in the very text. God makes him "in his own image, after his own likeness," makes him an intellectual creature, and so capable of "dominion." For whereinsoever else the image of God consisted, the intellectual nature was certainly a part of it and belonged to the whole species, and enabled them to have dominion over the inferior creatures; and therefore David says in the Eighth Psalm, above cited, "Thou hast made him little lower than the angels; Thou hast made him to have dominion." It is not of Adam King David speaks here, for (vs. 4) it is plain it is of man and the son of man — of the species of mankind.

31. And that this grant spoken to Adam was made to him and the

whole species of man, is clear from our author's own proof out of the Psalmist. "The earth,' saith the Psalmist, 'hath He given to the children of men,' which shows the title comes from fatherhood." These are Sir Robert's words in the Preface before cited, and a strange inference it is he makes: "God hath given the earth to the children of men, *ergo* the title comes from fatherhood." It is pity the propriety of the Hebrew tongue had not used "fathers of men," instead of "children of men," to express mankind; then indeed our author might have had the countenance of the sounds of the words to have placed the title in the fatherhood. But to conclude that the "fatherhood" had the right to the earth because God gave it to the "children of men," is a way of arguing peculiar to our author; and a man must have a great mind to go contrary to the sound as well as sense of the words before he could light on it. But the sense is yet harder and more remote from our author's purpose, for, as it stands in his Preface, it is to prove Adam's being monarch, and his reasoning is thus: God gave the earth to the "children of men," *ergo* Adam was monarch of the world. I defy any man to make a more pleasant conclusion than this, which cannot be excused from the most obvious absurdity, till it can be shown that by "children of men," he who had no father, Adam, alone is signified; but whatever our author does, the Scripture speaks not nonsense.

32. To maintain this property and private dominion of Adam, our author labours in the following page to destroy the community granted to Noah and his sons in that parallel place (Gen. ix. 1, 2, 3), and he endeavours to do it two ways.

(1.) Sir Robert would persuade us against the express words of the Scripture, that what was here granted to Noah was not granted to his sons in common with him. His words are: "As for the general community between Noah and his sons, which Mr. Selden will have to be granted to them (Gen. ix. 2), the text doth not warrant it." What warrant our author would have when the plain express words of Scripture, not capable of another meaning, will not satisfy him who pretends to build wholly on Scripture, is not easy to imagine. The text says: "God blessed Noah and his sons, and said unto *them*," *i.e.*, as our author would have it, unto *him*; for, saith he, "although the sons are there mentioned with Noah in the blessing, yet it may best be understood with a subordination or benediction in succession" (O. p. 211). That indeed is best for our author to be understood which best serves to his purpose; but

that truly may best be understood by anybody else which best agrees with the plain construction of the words and arises from the obvious meaning of the place, and then with "subordination and in succession" will not be best understood in a grant of God where he himself put them not, nor mentions any such limitation. But yet our author has reasons why it may best be understood so. "The blessing," says he in the following words, "might truly be fulfilled if the sons, either under or after their father, enjoyed a private dominion" (O. p. 211), which is to say, that a grant, whose express words give a joint title in present — for the text says, "into your hands they are delivered" — may best be understood with a subordination or in succession, because it is possible that in subordination or in succession it may be enjoyed, which is all one as to say that a grant of anything in present possession may best be understood of reversion, because it is possible one may live to enjoy it in reversion. If the grant be indeed to a father and to his sons *after him* who is so kind as to let his children enjoy it presently in common with him, one may truly say as to the event, one will be as good as the other; but it can never be true that what the express words grant in possession and in common may best be understood to be in reversion. The sum of all his reasoning amounts to this: God did not give to the sons of Noah the world in common with their father because it was possible they might enjoy it under or after him. A very good sort of argument against an express text of Scripture: but God must not be believed, though He speaks it Himself, when He says He does anything which will not consist with Sir Robert's hypothesis.

33. For it is plain, however he would exclude them, that part of this benediction, as he would have it in succession, must needs be meant to the sons, and not to Noah himself at all. "Be fruitful and multiply, and replenish the earth," says God in this blessing. This part of the benediction, as appears by the sequel, concerned not Noah himself at all, for we read not of any children he had after the Flood; and in the following chapter, where his posterity is reckoned up, there is no mention of any; and so this benediction in succession was not to take place till three hundred and fifty years after, and, to save our author's imaginary monarchy, the peopling of the world must be deferred three hundred and fifty years; for this part of the benediction cannot be understood with subordination, unless our author will say that they must ask leave of their father Noah to lie with their wives. But in this one point our

author is constant to himself in all his discourses: he takes care there should be monarchs in the world but very little that there should be people; and, indeed, his way of government is not the way to people the world, for how much absolute monarchy helps to fulfil this great and primary blessing of God Almighty: "Be fruitful and multiply, and replenish the earth," which contains in it the improvement, too, of arts and sciences and the conveniences of life, may be seen in those large and rich countries which are happy under the Turkish Government, where are not now to be found one-third, nay, in many, if not most parts of them, one-thirtieth, perhaps I might say, not one-hundredth of the people that were formerly, as will easily appear to any one who will compare the accounts we have of it at this time with ancient history. But this by the by.

34. The other parts of this benediction or grant are so expressed that they must needs be understood to belong equally to them all, as much to Noah's sons as to Noah himself, and not to his sons with a subordination or in succession. "The fear of you and the dread of you," says God, "shall be on every beast, etc." Will anybody but our author say that the creatures feared and stood in awe of Noah only, and not of his sons without his leave, or till after his death? And the following words: "Into your hands they are delivered," are they to be understood as our author says, "if your father please," or "they shall be delivered into your hands hereafter?" If this be to argue from Scripture, I know not what may not be proved by it, and I can scarce see how much this differs from that fiction and fancy, or how much a surer foundation it will prove than the opinions of philosophers and poets, which our author so much condemns in his Preface.

35. But our author goes on to prove, that—

It may best be understood with a subordination, or a benediction in succession; for (says he) it is not probable that the private dominion which God gave to Adam, and by his donation, assignation, or cession to his children, was abrogated, and a community of all things instituted between Noah and his sons. Noah was left the sole heir of the world; why should it be thought that God would disinherit him of his birthright and make him of all men in the world the only tenant in common with his children? (*O. p. 211*)

36. The prejudices of our own ill-grounded opinions, however by us called probable, cannot authorize us to understand Scripture contrary

to the direct and plain meaning of the words. I grant it is not probable that Adam's private dominion was here abrogated; because it is more than improbable — for it will never be proved — that Adam had any such private dominion; and since parallel places of Scripture are most probable to make us know how they may be best understood, there needs but the comparing this blessing here to Noah and his sons after the Flood with that to Adam after the Creation (Gen. i. 28) to assure anyone that God gave Adam no such private dominion. It is probable, I confess, that Noah should have the same title, the same property and dominion after the Flood that Adam had before it; but, since private dominion cannot consist with the blessing and grant God gave to him and his sons in common, it is a sufficient reason to conclude that Adam had none, especially since in the donation made to him there are no words that express it or do in the least favour it; and then let my reader judge whether it may best be understood, when in the one place there is not one word for it, not to say what has been above proved that the text itself proves the contrary, and in the other the words and sense are directly against it.

37. But our author says: "Noah was the sole heir of the world; why should it be thought that God would disinherit him of his birthright?" Heir, indeed, in England signifies the eldest son who is by the laws of England to have all his father's land; but where God ever appointed any such "heir of the world" our author would have done well to have shown us; and how God disinherited him of his birthright, or what harm was done him if God gave his sons a right to make use of a part of the earth for support of themselves and families, when the whole was not only more than Noah himself, but infinitely more than they all could make use of, and the possessions of one could not at all prejudice or, as to any use, straiten that of the other.

38. Our author probably foreseeing he might not be very successful in persuading people out of their senses, and, say what he could, men would be apt to believe the plain words of Scripture and think, as they saw, that the grant was spoken to Noah and his sons jointly, he endeavours to insinuate as if this grant to Noah conveyed no property, no dominion, because —

Subduing the earth and dominion over the creatures are therein omitted, nor the earth once named. And therefore (says he) there is a considerable difference between these two texts; the first

blessing gave Adam a "dominion over the earth and all creatures," the latter allows Noah liberty to "use the living creatures" for food. Here is no alteration or diminishing of his title to a property of all things, but an enlargement only of his commons (O. p. 211).

So that in our author's sense, all that was said here to Noah and his sons gave them no dominion, no property, but only enlarged the commons — their commons, I should say, since God says, "To you are they given" though our author says "his"; for as to Noah's sons, they, it seems, by Sir Robert's appointment, during their father's lifetime were to keep fasting days.

39. Any one but our author would be mightily suspected to be blinded with prejudice that, in all this blessing to Noah and his sons, could see nothing but only an enlargement of commons; for as to dominion, which our author thinks omitted, "the fear of you, and the dread of you," says God, "shall be upon every beast," which I suppose expresses the dominion, or superiority, was designed man over the living creatures as fully as may be; for in that fear and dread seems chiefly to consist what was given to Adam over the inferior animals, who, as absolute a monarch as he was, could not make bold with a lark or rabbit to satisfy his hunger, and had the herbs but in common with the beasts, as is plain from Gen. i. 2, 9, and 30. In the next place it is manifest that in this blessing to Noah and his sons property is not only given in clear words, but in a larger extent than it was to Adam. "Into your hands they are given," says God to Noah and his sons, which words, if they give not property, nay, *property in possession*, it will be hard to find words that can, since there is not a way to express a man's being possessed of anything more natural nor more certain than to say it is "delivered into his hands." And (vs. 3) to show that they had then given them the utmost property man is capable of, which is to have a right to destroy anything by using it: "Every moving thing that liveth," saith God, "shall be meat for you," which was not allowed to Adam in his charter. This our author calls "a liberty of using them for food and also an enlargement of commons, but no alteration of property" (O. p. 211). What other property man can have in the creatures but the "liberty of using them," is hard to be understood; so that if the first blessing, as our author says, gave Adam "dominion over the creatures," and the blessing to Noah and his sons gave them "such a liberty to use them" as Adam had not, it must needs give them something that

Adam with all his sovereignty wanted — something that one would be apt to take for a greater property; for certainly he has no absolute dominion over even the brutal part of the creatures, and the property he has in them is very narrow and scanty who cannot make that use of them which is permitted to another. Should any one who is absolute lord of a country have bidden our author “subdue the earth,” and given him dominion over the creatures in it, but not have permitted him to have taken a kid or a lamb out of the flock to satisfy his hunger, I guess he would scarce have thought himself lord or proprietor of that land or the cattle on it, but would have found the difference between “having dominion,” which a shepherd may have, and “having full property as an owner.” So that, had it been his own case, Sir Robert, I believe, would have thought here was an alteration, nay, an enlarging of property, and that Noah and his children had by this grant, not only property given them, but such property given them in the creatures as Adam had not, for however in respect of one another, men may be allowed to have propriety in their distinct portions of the creatures, yet in respect of God, the maker of heaven and earth, who is sole lord and proprietor of the whole world, man’s propriety in the creatures is nothing but that “liberty to use them” which God has permitted; and so man’s property may be altered and enlarged, as we see it here, after the Flood, when other uses of them are allowed which before were not. From all which I suppose it is clear that neither Adam nor Noah had any “private dominion,” any property in the creatures, exclusive of his posterity, as they should successively grow up into need of them and come to be able to make use of them.

40. Thus we have examined our author’s argument for Adam’s monarchy founded on the blessing pronounced (Gen. i. 28). Wherein I think it is impossible for any sober reader to find any other but the setting of mankind above the other kinds of creatures in this habitable earth of ours. It is nothing but the giving to man — the whole species of man — as the chief inhabitant, who is the image of his Maker, the dominion over the other creatures. This lies so obvious in the plain words that any one but our author would have thought it necessary to have shown how these words that seemed to say the quite contrary gave Adam monarchical absolute power over other men or the sole property in all the creatures; and methinks in a business of this moment, and that whereon he builds all that follows, he should have done something

more than barely cite words which apparently make against him. For, I confess, I cannot see anything in them tending to Adam's monarchy or private dominion, but quite the contrary. And I the less deplore the dulness of my apprehension herein, since I find the apostle seems to have as little notion of any such "private dominion of Adam" as I, when he says, "God gives us all things richly to enjoy," which he could not do if it were all given away already to monarch Adam and the monarchs — his heirs and successors. To conclude, this text is so far from proving Adam sole proprietor that, on the contrary, it is a confirmation of the original community of all things amongst the sons of men, which appearing from this donation of God, as well as other places of Scripture, the sovereignty of Adam, built upon his "private dominion," must fall, not having any foundation to support it.

41. But yet if, after all, any one will needs have it so that by this donation of God Adam was made sole proprietor of the whole earth, what will this be to his sovereignty, and how will it appear that propriety in land gives a man power over the life of another, or how will the possession even of the whole earth give any one a sovereign arbitrary authority over the persons of men? The most specious thing to be said is that he that is proprietor of the whole world may deny all the rest of mankind food, and so at his pleasure starve them, if they will not acknowledge his sovereignty and obey his will. If this were true, it would be a good argument to prove that there never was any such property, that God never gave any such private dominion, since it is more reasonable to think that God, who bid mankind increase and multiply, should rather Himself give them all a right to make use of the food and raiment and other conveniences of life, the materials whereof He had so plentifully provided for them, than to make them depend upon the will of a man for their subsistence who should have power to destroy them all when he pleased, and who, being no better than other men, was in succession likelier, by want and the dependence of a scanty fortune, to tie them to hard service than by liberal allowance of the conveniences of life to promote the great design of God: "increase and multiply." He that doubts this let him look into the absolute monarchies of the world, and see what becomes of the conveniences of life and the multitudes of people.

42. But we know God hath not left one man so to the mercy of another that he may starve him if he please. God, the Lord and Father

of all, has given no one of His children such a property in his peculiar portion of the things of this world, but that He has given his needy brother a right to the surplusage of his goods, so that it cannot justly be denied him when his pressing wants call for it; and, therefore, no man could ever have a just power over the life of another by right of property in land or possessions, since it would always be a sin in any man of estate to let his brother perish for want of affording him relief out of his plenty. As justice gives every man a title to the product of his honest industry and the fair acquisitions of his ancestors descended to him, so charity gives every man a title to so much out of another's plenty as will keep him from extreme want where he has no means to subsist otherwise. And a man can no more justly make use of another's necessity to force him to become his vassal by withholding that relief God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and, with a dagger at his throat, offer him death or slavery.

43. Should any one make so perverse an use of God's blessings poured on him with a liberal hand, should any one be cruel and uncharitable to that extremity, yet all this would not prove that propriety in land, even in this case, gave any authority over the persons of men, but only that compact might; since the authority of the rich proprietor and the subjection of the needy beggar began not from the possession of the lord, but the consent of the poor man who preferred being his subject to starving. And the man he thus submits to can pretend to no more power over him than he has consented to upon compact. Upon this ground a man's having his stores filled in a time of scarcity, having money in his pocket, being in a vessel at sea, being able to swim, etc., may as well be the foundation of rule and dominion as being possessor of all the land in the world — any of these being sufficient to enable me to save a man's life who would perish if such assistance were denied him. And anything, by this rule, that may be an occasion of working upon another's necessity to save his life or anything dear to him — at the rate of his freedom — may be made a foundation of sovereignty as well as property. From all which it is clear that though God should have given Adam private dominion, yet that private dominion could give him no sovereignty. But we have already sufficiently proved that God gave him no "private dominion."

CHAPTER V

OF ADAM'S TITLE TO SOVEREIGNTY BY THE SUBJECTION OF EVE

44. THE NEXT PLACE of Scripture we find our author builds his monarchy of Adam on is Gen. iii. 26: "And thy desire shall be to thy husband, and he shall rule over thee." "Here we have," says he, "the original grant of government," from whence he concludes in the following part of the page (*O. p. 244*), "that the supreme power is settled in the fatherhood, and limited to one kind of government, that is, to monarchy." For let his premises be what they will, this is always the conclusion: let "rule" in any text be but once named, and presently "absolute monarchy" is by divine right established. If any one will but carefully read our author's own reasoning from these words and consider, among other things, "the line and posterity of Adam," as he there brings them in, he will find some difficulty to make sense of what he says; but we will allow this at present to be his peculiar way of writing, and consider the force of the text in hand. The words are the curse of God upon the woman for having been the first and forwardest in the disobedience; and if we will consider the occasion of what God says here to our first parents that He was denouncing judgment and declaring His wrath against them both for their disobedience, we cannot suppose that this was the time wherein God was granting Adam prerogatives and privileges, investing him with dignity and authority, elevating him to dominion and monarchy; for though as helper in the temptation Eve was laid below him, and so he had accidentally a superiority over her for her greater punishment, yet he too had his share in the fall as well as the sin and was laid lower, as may be seen in the following verses; and it would be hard to imagine that God, in the same breath, should make him universal monarch over all mankind and a day-labourer for his life, turn him out of "paradise to till the ground" (vs. 23), and at the same time advance him to a throne and all the privileges and ease of absolute power.

45. This was not a time when Adam could expect any favours, any grant of privileges from his offended Maker. If this be "the original grant of government," as our author tells us, and Adam was now made monarch, whatever Sir Robert would have him, it is plain God made

him but a very poor monarch, such an one as our author himself would have counted it no great privilege to be. God sets him to work for his living, and seems rather to give him a spade into his hand to subdue the earth than a sceptre to rule over its inhabitants. "In the sweat of thy face thou shalt eat thy bread," says God to him (vs. 19). This was unavoidable, may it perhaps be answered, because he was yet without subjects and had nobody to work for him; but afterwards, living as he did above nine hundred years, he might have people enough whom he might command to work for him. No, says God, not only whilst thou art without other help save thy wife, but as long as thou livest shalt thou live by thy labour: "In the sweat of thy face shalt thou eat thy bread till thou return unto the ground, for out of it wast thou taken, for dust thou art, and unto dust shalt thou return" (vs. 19). It will perhaps be answered again in favour of our author that these words are not spoken personally to Adam, but in him, as their representative, to all mankind — this being a curse upon mankind because of the Fall.

46. God, I believe, speaks differently from men, because he speaks with more truth, more certainty; but when he vouchsafes to speak to men, I do not think he speaks differently from them in crossing the rules of language in use amongst them; this would not be to condescend to their capacities, when he humbles himself to speak to them, but to lose his design in speaking what, thus spoken, they could not understand. And yet thus must we think of God, if the interpretations of Scripture necessary to maintain our author's doctrine must be received for good; for by the ordinary rules of language, it will be very hard to understand what God says, if what He speaks here, in the singular number to Adam, must be understood to be spoken to all mankind; and what He says in the plural number (Gen. i. 26 and 28), must be understood of Adam alone, exclusive of all others; and what He says to Noah and his sons jointly must be understood to be meant to Noah alone (Gen. ix).

47. Further it is to be noted that these words here of Gen. iii. 16, which our author calls "the original grant of government," were not spoken to Adam, neither indeed was there any grant in them made to Adam, but a punishment laid upon Eve; and if we will take them as they were directed in particular to her, or in her, as their representative, to all other women, they will at most concern the female sex only, and import no more but that subjection they should ordinarily be in to their husbands. But there is here no more law to oblige a woman to such

subjection, if the circumstances either of her condition or contract with her husband should exempt her from it, than there is that she should bring forth her children in sorrow and pain, if there could be found a remedy for it, which is also a part of the same curse upon her,¹ for the whole verse runs thus: "Unto the woman He said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children, and thy desire shall be to thy husband, and he shall rule over thee." It would, I think, have been a hard matter for anybody but our author to have found out a grant of "monarchical government to Adam" in these words, which were neither spoken to nor of him; neither will any one, I suppose, by these words think the weaker sex, as by law, so subjected to the curse contained in them that it is their duty not to endeavour to avoid it. And will any one say that Eve, or any other woman, sinned if she were brought to bed without those multiplied pains God threatens her here with, or that either of our Queens, Mary or Elizabeth, had they married any of their subjects, had been by this text put into a political subjection to him, or that he should thereby have had monarchical rule over her? ² God, in this text, gives not, that I see, any authority to Adam over Eve, or to men over their wives, but only foretells what should be the woman's lot, how by his providence he would order it so that she should be subject to her husband, as we see that generally the laws of mankind and customs of nations have ordered it so, and there is, I grant, a foundation in nature for it.

48. Thus when God says of Jacob and Esau that "the elder should serve the younger" (Gen. xxv. 23), nobody supposes that God hereby

¹ [This section, which initially seems to indicate that Locke had views as to the fundamental equality of the sexes, not usual in his day, is in any case notable for its insistence that the inferior position of women is purely a consequence of legal enactment, and not of natural law. In view of quite recent controversy as to the propriety of using techniques to alleviate the pangs of childbirth, Locke's statement that it would be proper to deliver her therefrom is signally advanced. It is to be noted, first, that Locke was trained in medicine; secondly, that he was one of the ardent defenders of science and of scientific progress; and, thirdly, that in his rationalism he was generally opposed to basing doctrines on the plain words of Scripture, even though throughout this book, in controversy with Filmer, he insists on careful interpretation thereof.]

² [In England the laws of succession did not exclude women. In France, however, they were subject to the Salic law, the law of the Salic Franks, which precisely did rest on the subjection of women. Women would be, on this concept, under the authority of their husbands, who would indirectly rule.]

made Jacob Esau's sovereign, but foretold what should *de facto* come to pass.

But if these words here spoken to Eve must needs be understood as a law to bind her and all other women to subjection, it can be no other subjection than what every wife owes her husband; and then if this be the "original grant of government and the foundation of monarchical power," there will be as many monarchs as there are husbands. If therefore these words give any power to Adam, it can be only a conjugal power, not political — the power that every husband hath to order the things of private concernment in his family, as proprietor of the goods and land there, and to have his will take place before that of his wife in all things of their common concernment; but not a political power of life and death over her, much less over anybody else.

49. This I am sure: if our author will have this text to be a grant, the "original grant of government" — political government — he ought to have proved it by some better arguments than by barely saying that "thy desire shall be unto thy husband" was a law whereby Eve and "all that should come of her" were subjected to the absolute monarchical power of Adam and his heirs. "Thy desire shall be to thy husband" is too doubtful an expression, of whose signification interpreters are not agreed, to build so confidently on, and in a matter of such moment and so great and general concernment. But our author, according to his way of writing, having once named the text, concludes presently without any more ado that the meaning is as he would have it. Let the words "rule" and "subject" be but found in the text or margin, and it immediately signifies the duty of a subject to his *prince*. The relation is changed, and though God says "husband," Sir Robert will have it "king." Adam has presently absolute monarchical power over Eve, and not only over Eve, but "all that should come of her," though the Scripture says not a word of it, nor our author a word to prove it. But Adam must for all that be an "absolute monarch," and so down to the end of the chapter. And here I leave my reader to consider whether my bare saying, without offering any reasons to evince it, that this text gave not Adam that absolute monarchical power our author supposes, be not as sufficient to destroy that power as his bare assertion is to establish it, since the text mentions neither prince nor people, speaks nothing of "absolute" or "monarchical" power, but the subjection of Eve to Adam, a wife to her husband. And he that would trace our

author so all through would make a short and sufficient answer to the greatest part of the grounds he proceeds on, and abundantly confute them by barely denying; it being a sufficient answer to assertions without proof to deny them without giving a reason. And therefore should I have said nothing but barely denied that by this text "the supreme power was settled and founded by God himself in the fatherhood, limited to monarchy, and that to Adam's person and heirs," all which our author notably concludes from these words, as may be seen in the same page (*O. p. 244*), it had been a sufficient answer. Should I have desired any sober man only to have read the text and considered to whom and on what occasion it was spoken, he would no doubt have wondered how our author found out monarchical absolute power in it, had he not had an exceeding good faculty to find it himself, where he could not show it others. And thus we have examined the two places of Scripture, all that I remember our author brings to prove Adam's "sovereignty" — that supremacy, which, he says, "it was God's ordinance should be unlimited in Adam, and as large as all the acts of his will" (*O. p. 254*) — viz., Gen. i. 28 and Gen. iii. 16, one whereof signifies only the subjection of the inferior ranks of creatures to mankind, and the other the subjection that is due from a wife to her husband, both far enough from that which subjects owe the governors of political societies.

CHAPTER VI

OF ADAM'S TITLE TO SOVEREIGNTY BY FATHERHOOD

50. THERE IS ONE THING more, and then I think I have given you all that our author brings for proof of Adam's sovereignty, and that is a supposition of a natural right of dominion over his children by being their father; and this title of fatherhood he is so pleased with that you will find it brought in almost in every page; particularly he says, "not only Adam but the succeeding patriarchs had by right of fatherhood royal authority over their children"¹ And in the same page, "This

¹ [*P. p. 255*]

subjection of children being the fountain of all regal authority," etc. This being, as one would think by his so frequent mentioning it, the main basis of all his frame, we may well expect clear and evident reason for it, since he lays it down as a position necessary to his purpose that "every man that is born is so far from being free that by his very birth he becomes a subject of him that begets him" (O. p. 156). So that Adam being the only man created, and all ever since being begotten, nobody has been born free. If we ask how Adam comes by this power over his children, he tells us here, it is by begetting them; and so again (O. p. 223): "This natural dominion of Adam," says he, "may be proved out of Grotius himself, who teacheth that *generations jus acquiritur parentibus in liberos*." And indeed the act of begetting being that which makes a man a father, his right of a father over his children can naturally arise from nothing else.

51. Grotius tells us not here how far this *jus in liberos*, this power of parents over their children, extends, but our author, always very clear in the point, assures us it is "supreme power" and like that of absolute monarchs over their slaves — absolute power of life and death. He that should demand of him how or for what reason it is that begetting a child gives the father such an absolute power over him, will find him answer nothing. We are to take his word for this as well as several other things, and by that the laws of nature and the constitutions of government must stand or fall. Had he been an *absolute monarch*, this way of talking might have suited well enough; *pro ratione voluntas* might have been of force in his mouth, but in the way of proof or argument is very unbecoming, and will little advantage his plea for absolute monarchy. Sir Robert has too much lessened a subject's authority to leave himself the hopes of establishing anything by his bare saying it; one slave's opinion without proof is not of weight enough to dispose of the liberty and fortunes of all mankind. If all men are not, as I think they are, naturally equal, I am sure all slaves are; and then I may without presumption oppose my single opinion to his and be confident that my saying that "begetting of children makes them not slaves to their fathers" as certainly sets all mankind free as his affirming the contrary makes them all slaves. But that this position which is the foundation of all their doctrine who would have monarchy to be *jure divino*, may have all fair play, let us hear what reasons others give for it, since our author offers none.

52. The argument I have heard others make use of to prove that fathers, by begetting them, come by an absolute power over their children, is this: that "fathers have a power over the lives of their children, because they give them life and being," which is the only proof it is capable of, since there can be no reason why naturally one man should have any claim or pretence of right over that in another which was never his, which he bestowed not, but was received from the bounty of another. First, I answer that every one who gives another anything has not always thereby a right to take it away again. But, secondly, they who say the father gives life to children are so dazzled with the thoughts of monarchy that they do not, as they ought, remember God who is "the author and giver of life; it is in Him alone we live, move, and have our being." How can he be thought to give life to another that knows not wherein his own life consists? Philosophers are at a loss about it after their most diligent inquiries; and anatomists, after their whole lives and studies spent in dissections and diligent examining the bodies of men, confess their ignorance in the structure and use of many parts of man's body, and in that operation wherein life consists in the whole. And doth the rude ploughman or the more ignorant voluptuary frame or fashion such an admirable engine as this is and then put life and sense into it? Can any man say he formed the parts that are necessary to the life of his child, or can he suppose himself to give the life and yet not know what subject is fit to receive it, nor what actions or organs are necessary for its reception or preservation?

53. To give life to that which has yet no being is to frame and make a living creature, fashion the parts, and mould and suit them to their uses, and, having proportioned and fitted them together, to put into them a living soul.² He that could do this might indeed have some pretence to destroy his own workmanship. But is there any one so

² [Locke is here in agreement with the Catholic position. Catholic thought generally distinguishes between immediate and final causes. More especially, in this sphere, it emphasizes the Deity as the sole source of life, and human generation as the means He had established. This issue was subsequently important with the development of materialism in the 18th century; while in a new form it appears in the conflict over vitalism. It is here to be noted that Locke, though a rationalist, and one of the foundations on which materialist philosophy was later developed, is himself not a complete materialist, though in his psychology, developed in his *Essay on Human Understanding* (1690), he develops the theory of rational man produced by environment and propounds the doctrine of the *tabula rasa*.]

bold that dares thus far arrogate to himself the incomprehensible works of the Almighty Who alone did at first and continues still to make a living soul? He alone can breathe in the breath of life. If any one thinks himself an artist at this, let him number up the parts of his child's body which he hath made, tell me their uses and operations, and when the living and rational soul began to inhabit this curious structure, when sense began, and how this engine which he has framed thinks and reasons. If he made it let him, when it is out of order, mend it, at least tell wherein the defects lie. "Shall He that made the eye not see?" says the Psalmist (Psalm xciv. 9). See these men's vanities; the structure of that one part is sufficient to convince us of an all-wise Contriver, and He has so visible a claim to us as His workmanship that one of the ordinary appellations of God in Scripture is "God our Maker" and "the Lord our Maker." And therefore, though our author, for the magnifying his "fatherhood," be pleased to say (*O. p.* 159) "That even the power which God himself exerciseth over mankind is by right of fatherhood," yet this fatherhood is such an one as utterly excludes all pretence of title in earthly parents; for He is King because He is indeed maker of us all, which no parents can pretend to be of their children.

54. But had men skill and power to make their children, it is not so slight a piece of workmanship that it can be imagined they could make them without designing it. What father of a thousand, when he begets a child, thinks farther than the satisfying his present appetite? God in his infinite wisdom has put strong desires of copulation into the constitution of men, thereby to continue the race of mankind, which he doth most commonly without the intention and often against the consent and will of the begetter. And indeed those who desire and design children are but the occasions of their being and, when they design and wish to beget them, do little more towards their making than Deucalion and his wife³ in the fable did towards the making of mankind by throwing pebbles over their heads.

³ [In Greek legend, Deucalion was the son of Prometheus and the ancestor of the Hellenic race. He and his wife, Pyrrha, were the only survivors of a flood Zeus sent when he had decided to destroy all mankind. They landed on Mount Parnassus, where they sacrificed to Zeus and asked how to renew the human race. They were told to cast behind them the "bones of the great mother," that is, stones of the earth of the hillside. Those thrown by Deucalion became men and those thrown by Pyrrha became women. The myth of such a flood is common to many peoples. Compare the story of Noah and the Flood.]

55. But grant that the parents made their children, gave them life and being, and that hence there followed an absolute power. This would give the father but a joint dominion with the mother over them; for nobody can deny but that the woman hath an equal share, if not the greater as nourishing the child a long time in her own body out of her own substance. There it is fashioned, and from her it receives the materials and principles of its constitution; and it is so hard to imagine the rational soul should presently inhabit the yet unformed embryo, as soon as the father has done his part in the act of generation, that, if it must be supposed to derive anything from the parents, it must certainly owe most to the mother. But be that as it will, the mother cannot be denied an equal share in begetting of the child, and so the absolute authority of the father will not arise from hence. Our author, indeed, is of another mind; for he says: "We know that God at the creation gave the sovereignty to the man over the woman, as being the nobler and principal agent in generation" (*O. p. 172*). I remember not this in my Bible; and when the place is brought where God at the creation gave the sovereignty to man over the woman, and that for this reason, because "he is the nobler and principal agent in generation," it will be time enough to consider and answer it. But it is no new thing for our author to tell us his own fancies for certain and divine truths, though there be often a great deal of difference between his and divine revelations; for God, in the Scripture, says, "His father and his mother that begot him."

56. They who allege the practice of mankind for *exposing* or *selling* their children as a proof of their "power over them," are, with Sir Robert, happy arguers and cannot but recommend their opinion by founding it on the most shameful action and most unnatural murder human nature is capable of. The dens of lions and nurseries of wolves know no such cruelty as this; these savage inhabitants of the desert obey God and nature in being tender and careful of their offspring; they will hunt, watch, fight, and almost starve for the preservation of their young, never part with them, never forsake them, till they are able to shift for themselves. And is it the privilege of man alone to act more contrary to nature than the wild and most untamed part of the creation? Doth God forbid us under the severest penalty — that of death — to take away the life of any man, a stranger, and upon provocation? And does He permit us to destroy those He has given us the

charge and care of, and by the dictates of nature and reason, as well as His revealed command, requires us to preserve? He has in all the parts of Creation taken a peculiar care to propagate and continue the several species of creatures, and makes the individuals act so strongly to this end that they sometimes neglect their own private good for it, and seem to forget that general rule which nature teaches all things—of self-preservation—and the preservation of their young, as the strongest principle in them, overrules the constitution of their particular natures. Thus we see, when their young stand in need of it, the timorous become valiant, the fierce and savage kind, and the ravenous tender and liberal.

57. But if the example of what hath been done be the rule of what ought to be, history would have furnished our author with instances of this absolute fatherly power in its height and perfection, and he might have shown us in Peru people that begot children on purpose to fatten and eat them. The story is so remarkable that I cannot but set it down in the author's words:

In some provinces they were so liquorish after man's flesh that they would not have the patience to stay till the breath was out of the body, but would suck the blood as it ran from the wounds of the dying man. They had public shambles of man's flesh, and their madness herein was to that degree that they spared not their own children, which they had begot on strangers taken in war; for they made their captives their mistresses and choicely nourished the children they had by them, till about thirteen years old they butchered and ate them, and they served the mothers after the same fashion when they grew past child-bearing and ceased to bring them any more roasters (Garcilasso de la Vega, *Hist. des Yncas de Peru*, l. i. c. 12).⁴

58. Thus far can the busy mind of man carry him to a brutality below the level of beasts when he quits his reason, which places him almost equal to angels. Nor can it be otherwise in a creature whose thoughts are more than the sands and wider than the ocean, where fancy and passion must needs run him into strange courses if reason, which is his only star and compass, be not that he steers by. The imagination is always restless and suggests variety of thoughts, and the

⁴ [Garcilasso de la Vega (1535–1616), called Inca, was a historian of Peru and the first South American in Spanish literature. His most famous books are: *La Florida del Inca* (1605) and his history of Peru, *Commentarios reales que tratan del origen de los Incas* (Lisbon, Part I, 1609; Part II, 1617).]

will, reason being laid aside, is ready for every extravagant project; and, in this state, he that goes farthest out of the way is thought fittest to lead and is sure of most followers; and when fashion hath once established what folly or craft began, custom makes it sacred, and it will be thought impudence or madness to contradict or question it. He that will impartially survey the nations of the world will find so much of their religions, governments, and manners brought in and continued amongst them by these means that he will have but little reverence for the practices which are in use and credit amongst men, and will have reason to think that the woods and forests, where the irrational, untaught inhabitants keep right by following nature, are fitter to give us rules than cities and palaces, where those that call themselves civil and rational go out of their way by the authority of example. If precedents are sufficient to establish a rule in this case, our author might have found in Holy Writ children sacrificed by their parents, and this amongst the people of God themselves. The Psalmist tells us (Psalm cvi. 38): "They shed innocent blood, even the blood of their sons and of their daughters whom they sacrificed unto the idols of Canaan." But God judged not of this by our author's rule, nor allowed of the authority of practice against His righteous law; but, as it follows there, "The land was polluted with blood; therefore was the wrath of the Lord kindled against his people, insomuch that he abhorred his own inheritance." The killing of their children, though it were fashionable, was charged on them as innocent blood and so had in the account of God the guilt of murder, as the offering them to idols had the guilt of idolatry.

59. Be it then, as Sir Robert says, that *anciently* it was usual for men "to sell and castrate their children" (O. p. 155). Let it be, that they exposed them, add to it, if you please — for this is still greater power — that they begat them for their tables to fat and eat them. If this proves a right to do so, we may, by the same argument, justify adultery, incest, and sodomy, for there are examples of these too, both ancient and modern; sins which I suppose have their principal aggravation from this, that they cross the main intention of nature, which willeth the increase of mankind and the continuation of the species in the highest perfection, and the distinction of families, with the security of the marriage-bed, as necessary thereunto.

60. In confirmation of this natural authority of the father, our author brings a lame proof from the positive command of God in Scripture; his words are:

To confirm the natural right of regal power, we find in the Decalogue that the law which enjoins obedience to kings, is delivered in the terms, "Honour thy father.⁵ . . . Whereas many confess that government only in the abstract is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power; and therefore we find the commandment that enjoins obedience to superiors given in the terms, "Honour thy father"; so that not only the power and right of government, but the form of the power governing, and the person having the power, are all the ordinances of God. The first father had not only simply power, but power monarchical, as he was father immediately from God (O. p. 254).

To the same purpose, the same law is cited by our author in several other places and just after the same fashion — that is, "and mother," as apocryphal words, are always left out; a great argument of our author's ingenuity and the goodness of his cause which required in its defender zeal to a degree of warmth able to warp the sacred rule of the Word of God to make it comply with his present occasion — a way of proceeding not unusual to those who embrace not truths, because reason and revelation offer them, but espouse tenets and parties for ends different from truth, and then resolve at any rate to defend them, and so do with the words and sense of authors they would fit to their purpose, just as Procrustes did with his guests, lop or stretch them, as may best fit them to the size of their notions; and they always prove like those so served, deformed, lame, and useless.⁶

61. For had our author set down this command without garbling, as God gave it, and joined "mother" to father, every reader would have seen that it had made directly against him, and that it was so far from establishing the "monarchical power of the father" that it set up the mother equal with him, and enjoined nothing but was due in common to both father and mother; for that is the constant tenor of the Scripture:

⁵ [P. p. 260]

⁶ [Here especially, as generally throughout the First Treatise, Locke attacks Filmer for imprecise language. The 17th century was especially concerned with the development of science and scientific terminology. Locke, in this respect following Hobbes and Spinoza, was insistent on clear concepts and precise language for the discussion of man and society. He was, in this sense, legitimately one of the ancestors of the modern science of semantics. It may be noted, too, that the fight for constitutionalism, as against divine right, was a struggle for rational analysis as against myth. In this sense Locke, rather than Filmer, was the Aristotelian.]

Honour thy father and thy mother (Exod. xx.) . . . He that smiteth his father or mother, shall surely be put to death (xxi. 15) . . . He that curseth his father or mother, shall surely be put to death (vs. 17) . . . (repeated Lev. xx. 9 and by our Saviour, Matt. xv. 4) . . . Ye shall fear every man his mother and his father (Lev. xix. 3) . . . If any man have a rebellious son, which will not obey the voice of his father or the voice of his mother, then shall his father and his mother lay hold on him and say "This our son is stubborn and rebellious, he will not obey our voice" (Deut. xxi. 18, 19, 20, 21) . . . Cursed be he that setteth light by his father or his mother (xxvii. 16).

"My son, hear the instructions of thy father, and forsake not the law of thy mother" are the words of Solomon, a king who was not ignorant of what belonged to him as father or of a king; and yet he joins father and mother together in all the instructions he gives children quite through his book of Proverbs:

Woe unto him that saith unto his father, "What begettest thou" or to the woman, "What hast thou brought forth"? (Isa. xlv. 10) . . . In thee have they set light by father and mother (Ezek. xxii. 7) . . . And it shall come to pass, that when any shall yet prophesy, then his father and his mother that begat him shall say unto him, "Thou shalt not live," and his father and his mother that begat him shall thrust him through when he prophesieth (Zech. xiii. 3).

Here not the father only, but the father and mother jointly, had power in this case of life and death. Thus ran the law of the Old Testament, and in the New they are likewise joined in the obedience of their children (Eph. vi. 1). The rule is: "Children, obey your parents," and I do not remember that I anywhere read: "Children, obey your father," and no more. The Scripture joins "mother," too, in that homage which is due from children; and had there been any text where the honour or obedience of children had been directed to the father alone, it is not likely that our author, who pretends to build all upon Scripture, would have omitted it — nay, the Scripture makes the authority of father and mother, in respect of those they have begot, so equal that in some places it neglects even the priority of order which is thought due to the father, and the mother is put first, as Lev. xix. 3; from which so constantly joining father and mother together, as is found quite through Scripture, we may conclude that the honour they have a title to from their children is one common right belonging so equally to them both that neither can claim it wholly, neither can be excluded.

62. One would wonder, then, how our author infers from the Fifth Commandment that "all power was originally in the father"; how he finds "monarchical power of government" settled and fixed by the Commandment, "Honour thy father and thy mother," if all the honour due by the Commandment, be it what it will, be the only right of the father, because he, as our author says, "has the sovereignty over the woman, as being the nobler and principal agent in generation"—why did God afterwards all along join the mother with him to share in his honour? Can the father, by this sovereignty of his, discharge the child from paying this honour to his mother? The Scripture gave no such licence to the Jews, and yet there were often breaches wide enough betwixt husband and wife, even to divorce and separation; and I think nobody will say a child may withhold honour from his mother, or, as the Scripture terms it, "set light by her," though his father should command him to do so, no more than the mother could dispense with him for neglecting to honour his father; whereby it is plain that this command of God gives the father no sovereignty, no supremacy.

63. I agree with our author that the title to this honour is vested in the parents by nature and is a right which accrues to them by their having begotten their children, and God by many positive declarations has confirmed it to them. I also allow our author's rule, "that in grants and gifts that have their original from God and nature, as the power of the father"—let me add "and mother," for whom God hath joined together let no man put asunder—"no inferior power of men can limit, nor make any law of prescription against them" (*O. p. 158*). So that the mother having by this law of God a right to honour from her children which is not subject to the will of her husband, we see this "absolute monarchical power of the father" can neither be founded on it, nor consist with it; and he has a power very far from monarchical, very far from that absoluteness our author contends for, when another has over his subjects the same power he hath, and by the same title; and therefore he cannot forbear saying himself that "he cannot see how any man's children can be free from subjection to their parents,"⁷ which, in common speech, I think signifies mother as well as father, or, if parents here signifies only father, it is the first time I ever yet knew it to do so, and by such an use of words one may say anything.

64. By our author's doctrine, the father having absolute jurisdiction

⁷ [*P. p. 251*]

over his children, has also the same over their issue; and the consequence is good, were it true that the father had such a power; and yet I ask our author whether the grandfather by his sovereignty could discharge the grandchild from paying to his father the honour due to him by the Fifth Commandment. If the grandfather hath, by "right of fatherhood," sole sovereign power in him, and that obedience which is due to the supreme magistrate be commanded in these words, "Honour thy father," it is certain the grandfather might dispense with the grandson's honouring his father, which since it is evident in common sense he cannot, it follows from hence that "honour thy father and mother" cannot mean an absolute subjection to a sovereign power, but something else. The right, therefore, which parents have by nature and which is confirmed to them by the Fifth Commandment, cannot be that political dominion which our author would derive from it; for that, being in every civil society supreme somewhere, can discharge any subject from any political obedience to any one of his fellow subjects. But what law of the magistrate can give a child liberty not to "honour his father and mother"? It is an eternal law, annexed purely to the relation of parents and children, and so contains nothing of the magistrate's power in it, nor is subjected to it.^a

65. Our author says, "God hath given to a father a right or liberty to alien his power over his children to any other" (*O. p. 155*). I doubt whether he can alien wholly the right of "honour" that is due from them; but be that as it will, this I am sure, he cannot alien and retain the same power. If therefore the magistrate's sovereignty be, as our author would have it, "nothing but the authority of a supreme father,"^a it is unavoidable that if the magistrate hath all this paternal right, as he must have

^a [Here Locke, in combatting Filmer, stresses parental authority as natural rather than legal, a position that is opposed to his statement on women earlier noted, even though the controversial issue in each case is the same. Aristotle, it may be noted, while treating the city-state as different in kind as well as in scale from the family, held that it did develop out of it, as did Jean Bodin in his *Six Livres de la Republique* (1576). While Locke effectively disposes of Filmer's arguments, the familial doctrine of political authority is, though not the sole adequate explanation, one of the theories consistent with a historical and evolutionary view point. The natural law and rights theory, of which Locke was one of the chief exponents, was, on the other hand, analytical and was to lead to an individualism opposed to the concept of community, though Locke himself did not push it to this extreme.]

^a [*P. p. 260*]

if fatherhood be the fountain of all authority, then the subjects, though fathers, can have no power over their children, no right to honour from them; for it cannot be all in another's hands, and a part remain with the parents. So that, according to our author's own doctrine, "Honour thy father and mother" cannot possibly be understood of political subjection and obedience, since the laws, both in the Old and New Testament, that commanded children to "honour and obey their parents," were given

- to such whose fathers were under civil government and fellow subjects with them in political societies; and to have bid them "honour and obey their parents," in our author's sense, had been to bid them be subjects to those who had no title to it, the right to obedience from subjects being all vested in another; and instead of teaching obedience, this had been to foment sedition, by setting up powers that were not. If therefore this command, "Honour thy father and mother," concern political dominion, it directly overthrows our author's monarchy; since it being to be paid by every child to his father, even in society every father must necessarily have political dominion, and there will be as many sovereigns as there are fathers; besides that the mother, too, hath her title, which destroys the sovereignty of one supreme monarch. But if "Honour thy father and mother" mean something distinct from political power, as necessarily it must, it is besides our author's business, and serves nothing to his purpose.

66. "The law that enjoins obedience to kings is delivered," says our author, "in the terms, 'Honour thy father,' as if all power were originally in the father" (O. p. 254). And that law is also delivered, say I, in the terms, "Honour thy mother," as if all power were originally in the mother. I appeal whether the argument be not as good on one side as the other, father and mother being joined all along in the Old and New Testament wherever honour or obedience is enjoined children. Again our author tells us (O. p. 254), "That this command, 'Honour thy father,' gives the right to govern, and makes the form of government monarchical." To which I answer that, if by "Honour thy father" be meant obedience to the political power of the magistrate, it concerns not any duty we owe to our natural fathers, who are subjects, because they, by our author's doctrine, are divested of all that power, it being placed wholly in the prince, and so, being equally subjects and slaves with their children, can have no right by that title to any such honour or obedience as contains in it political subjection. If "Honour thy father and

mother" signifies the duty we owe our natural parents, as by our Saviour's interpretation (Matt. xv. 4 and all the other mentioned places) it is plain it does, then it cannot concern political obedience, but a duty that is owing to persons who have no title to sovereignty, nor any political authority as magistrates over subjects. For the person of a private father and a title to obedience due to the supreme magistrate are things inconsistent, and therefore this command, which must necessarily comprehend the persons of natural fathers, must mean a duty we owe them distinct from our obedience to the magistrate, and from which the most absolute power of princes cannot absolve us. What this duty is, we shall in its due place examine.

67 And thus we have at last got through all that in our author looks like an argument for that "absolute unlimited sovereignty," described sect. 8, which he supposes in Adam; so that mankind ever since have been all born slaves, without any title to freedom. But if Creation, which gave nothing but a being, made not Adam prince of his posterity; if Adam (Gen i. 28) was not constituted lord of mankind, nor had a private dominion given him exclusive of his children, but only a right and power over the earth and inferior creatures in common with the children of men; if also (Gen. iii. 16) God gave not any particular power to Adam over his wife and children, but only subjected Eve to Adam as a punishment, or foretold the subjection of the weaker sex in the ordering the common concerns of their families, but gave not thereby to Adam, as to the husband, power of life and death, which necessarily belongs to the magistrate, if fathers by begetting their children acquire no such power over them, and if the command, "Honour thy father and mother," give it not, but only enjoins a duty owing to parents equally, whether subjects or not, and to the mother as well as the father — if all this be so, as I think by what has been said is very evident, then man has a *natural freedom*, notwithstanding all our author confidently says to the contrary, since all that share in the same common nature, faculties, and powers are in nature equal and ought to partake in the same common rights and privileges, till the manifest appointment of God, who is "Lord over all, blessed for ever," can be produced to show any particular person's supremacy, or a man's own consent subjects him to a superior. This is so plain that our author confesses that Sir John Hayward, Blackwood, and Barclay, "the great vindicators of the right of kings," could not deny it, "but admit with one consent the natural liberty and

equality of mankind" for a truth unquestionable. And our author hath been so far from producing anything that may make good his great position, that "Adam was absolute monarch" and so "men are not naturally free," that even his own proofs make against him; so that, to use his own way of arguing, "the first erroneous principle failing, the whole fabric of this vast engine of absolute power and tyranny drops down of itself," and there needs no more to be said in answer to all that he builds upon so false and frail a foundation.

68. But to save others the pains, were there any need, he is not sparing himself to show, by his own contradictions, the weakness of his own doctrine. Adam's absolute and sole dominion is that which he is everywhere full of and all along builds on, and yet he tells us that "as Adam was lord of his children, so his children under him had a command and power over their own children."¹⁰ The unlimited and undivided sovereignty of Adam's fatherhood, by our author's computation, stood but a little while, only during the first generation; but as soon as he had grandchildren, Sir Robert could give but a very ill account of it. "Adam, as father of his children," saith he, "hath an absolute, unlimited royal power over them, and by virtue thereof over those that they begot, and so to all generations"; and yet his children, viz., Cain and Seth, have a paternal power over their children at the same time; so that they are at the same time *absolute lords* and yet *vassals* and *slaves*; Adam has all the authority, as "grandfather of the people," and they have a part of it as fathers of a part of them; he is absolute over them and their posterity by having begotten them, and yet they are absolute over their children by the same title. "No," says our author, "Adam's children under him had power over their own children, but still with subordination to the first parent." A good distinction that sounds well, and it is pity it signifies nothing, nor can be reconciled with our author's words. I readily grant that, supposing Adam's absolute power over his posterity, any of his children might have from him a delegated and so a subordinate power over a part or all the rest; but that cannot be the power our author speaks of here; it is not a power by grant and commission but the natural paternal power he supposes a father to have over his children. For, first, he says, "As Adam was lord of his children, so his children under him had a power over their own children." They were then lords over their own children after the same manner and by the same title

¹⁰ [P. p. 255]

that Adam was, *i.e.*, by right of generation, by "right of fatherhood." Secondly, it is plain he means the natural power of fathers, because he limits it to be only "over their own children"; a delegated power has no such limitation as only over their own children, it might be over others as well as their own children. Thirdly, if it were a delegated power, it must appear in Scripture; but there is no ground in Scripture to affirm that Adam's children had any other power over theirs than what they naturally had as fathers.

69. But that he means here paternal power and no other is past doubt from the inference he makes in these words immediately following: "I see not then how the children of Adam or of any man else can be free from subjection to their parents." Whereby it appears that the power on one side and the subjection on the other our author here speaks of, is that natural power and subjection between parents and children, for that which every man's children owed could be no other; and that our author always affirms to be absolute and unlimited. This natural power of parents over their children Adam had over his posterity, says our author; and this power of parents over their children, his children had over theirs in his lifetime, says our author also; so that Adam, by a natural right of father, had an absolute unlimited power over all his posterity, and at the same time his children had by the same right absolute unlimited power over theirs. Here then are two absolute unlimited powers existing together, which I would have anybody reconcile one to another or to common sense. For the salvo he has put in of subordination makes it more absurd: to have one absolute unlimited, nay, unlimitable, power in subordination to another is so manifest a contradiction that nothing can be more. "Adam is absolute prince with the unlimited authority of fatherhood over all his posterity"; all his posterity are then absolutely his subjects; and, as our author says, his slaves, children, and grandchildren are equally in this state of subjection and slavery; and yet, says our author, "the children of Adam have paternal, *i.e.*, absolute unlimited power over their own children," which in plain English is they are slaves and absolute princes at the same time and in the same government, and one part of the subjects have an absolute unlimited power over the other by the natural right of parentage.

70. If any one will suppose, in favour of our author, that he here meant that parents, who are in subjection themselves to the absolute

authority of their father, have yet some power over their children, I confess he is something nearer the truth; but he will not at all hereby help our author; for he, nowhere speaking of the paternal power but as an absolute unlimited authority, cannot be supposed to understand anything else here unless he himself had limited it and showed how far it reached; and that he means here paternal authority in that large extent is plain from the immediately following words: "This subjection of children being," says he, "the foundation of all regal authority."¹¹ The subjection, then, that in the former line he says "every man is in to his parents," and consequently what Adam's grandchildren were in to their parents, was that which was the fountain of all regal authority, *i.e.*, according to our author, absolute unlimitable authority. And thus Adam's children had regal authority over their children, whilst they themselves were subjects to their father and fellow subjects with their children. But let him mean as he pleases, it is plain he allows "Adam's children to have paternal power,"¹² as also all other fathers to have "paternal power over their children" (O. p. 156). From whence one of these two things will necessarily follow: that either Adam's children, even in his lifetime, had, and so all other fathers have, as he phrases it, "by right of fatherhood royal authority over their children,"¹³ or else that Adam "by right of fatherhood had not royal authority." For it cannot be but that paternal power does, or does not, give royal authority to them that have it; if it does not, then Adam could not be sovereign by this title, nor anybody else; and then there is an end of all our author's politics at once; if it does give royal authority, then every one that has paternal power has royal authority; and then by our author's patriarchal government there will be as many kings as there are fathers.

71. And thus, what a monarchy he hath set up let him and his disciples consider. Princes certainly will have great reason to thank him for these new politics, which set up as many absolute kings in every country as there are fathers of children. And yet who can blame our author for it, it lying unavoidably in the way of one discoursing upon our author's principles? For, having placed an "absolute power in fathers by right of begetting," he could not easily resolve how much of this power belonged to a son over the children he had begotten; and so it fell out to be a very hard matter to give all the power, as he does, to Adam, and yet allow a part in his lifetime to his children when they

¹¹ [P. p. 255]¹² [P. p. 255]¹³ [P. p. 255]

were parents, and which he knew not well how to deny them. This makes him so doubtful in his expressions and so uncertain where to place this absolute natural power which he calls "fatherhood." Sometimes Adam alone has it all, as p. 13,¹⁴ *O.* pp. 244-245, and Preface.

Sometimes parents have it, which word scarce signifies the father alone.¹⁵

Sometimes children during their father's lifetime.¹⁶

Sometimes fathers of families.¹⁷

Sometimes fathers indefinitely (*O.* p. 155).

Sometimes the heir to Adam (*O.* p. 253).

Sometimes the posterity of Adam (*O.* pp. 244, 246).

Sometimes prime fathers, all sons or grandchildren of Noah (*O.* p. 244)

Sometimes the eldest parents.¹⁸

Sometimes all kings.¹⁹

Sometimes all that have supreme power (*O.* p. 245).

Sometimes heirs to those first progenitors, who were at first the natural parents of the whole people.²⁰

Sometimes an elective king²¹

Sometimes those, whether a few or a multitude, that govern the commonwealth.²²

Sometimes he that can catch it — an usurer. (*O.* p. 155)²³

72. Thus this new nothing that is to carry with it all power, authority, and government — this "fatherhood" which is to design the person and establish the throne of monarchs whom the people are to obey — may, according to Sir Robert, come into any hands, anyhow, and so by his politics give to democracy royal authority and make an usurper a lawful prince. And if it will do all these fine feats, much good do our author and all his followers with their omnipotent fatherhood which can serve for nothing but to unsettle and destroy all the lawful governments in the world and to establish in their room disorder, tyranny, and usurpation.

¹⁴ [*P.* p. 255]

¹⁵ [*P.* p. 255]

¹⁶ [*P.* p. 255]

¹⁷ [*P.* p. 281]

¹⁸ [*P.* p. 255]

¹⁹ [*P.* p. 258]

²⁰ [*P.* p. 258]

²¹ [*P.* p. 259]

²² [*P.* p. 259]

²³ [*P.* p. 259]

CHAPTER VII

OF FATHERHOOD AND PROPERTY CONSIDERED TOGETHER
AS FOUNTAINS OF SOVEREIGNTY

73. *IN THE FOREGOING chapters we have seen what Adam's monarchy was in our author's opinion, and upon what titles he founded it. The foundations which he lays the chief stress on, as those from which he thinks he may best derive monarchical power to future princes, are two, viz., "fatherhood" and "property"; and therefore the way he proposes to "remove the absurdities and inconveniences of the doctrine of natural freedom is to maintain the natural and private dominion of Adam" (O. p. 222). Conformable hereunto, he tells us,*

The grounds and principles of government necessarily depend upon the original property (O. p. 108) . . . The subjection of children to their parents is the fountain of all regal authority.¹ . . . And all power on earth is either derived or usurped from the fatherly power, there being no other original to be found of any power whatever (O. p. 158).

I will not stand here to examine how it can be said without a contradiction that the "First grounds and principles of government necessarily depend upon the original of property," and yet, "That there is no other original of any power whatsoever but that of the father"; it being hard to understand how there can be "no other original but fatherhood," and yet that the "grounds and principles of government depend upon the original of property" — property and fatherhood being as far different as lord of a manor and father of children. Nor do I see how they will either of them agree with what our author says (O. p. 244) of God's sentence against Eve (Gen. iii. 16), "that it is the original grant of government"; so that if that were the original, government had not its original, by our author's own confession, either from property or fatherhood; and this text, which he brings as a proof of Adam's power over Eve, necessarily contradicts what he says of the fatherhood, that it is the "sole fountain of all power"; for if Adam had any such regal power over Eve as our author contends for, it must be by some other title than that of begetting.

¹ [P. p. 245]

74. But I leave him to reconcile these contradictions, as well as many others which may plentifully be found in him by anyone who will but read him with a little attention, and shall come now to consider how these two originals of government, "Adam's natural and private dominion," will consist and serve to make out and establish the titles of succeeding monarchs, who, as our author obliges them, must all derive their power from these fountains. Let us then suppose Adam made "by God's donation" lord and sole proprietor of the whole earth in as large and ample a manner as Sir Robert could wish; let us suppose him also "by right of fatherhood" absolute ruler over his children with an unlimited supremacy; I ask, then, upon Adam's death what becomes of both his natural and private dominion? And I doubt not it will be answered that they descended to his next heir, as our author tells us in several places. But this way, it is plain, cannot possibly convey both his natural and private dominion to the same person; for should we allow that all the property, all the estate of the father, ought to descend to the eldest son — which will need some proof to establish it — and so he has by that title all the private dominion of the father, yet the father's natural dominion, the paternal power, cannot descend to him by inheritance; for it being a right that accrues to a man only by begetting, no man can have this natural dominion over any one he does not beget, unless it can be supposed that a man can have a right to anything without doing that upon which that right is solely founded. For if a father by begetting, and no other title, had natural dominion over his children, he that does not beget them cannot have this natural dominion over them; and therefore be it true or false that our author says (*O.* p. 156) that "every man that is born, by his very birth becomes a subject to him that begets him," this necessarily follows — viz., that a man by his birth cannot become a subject to his brother who did not beget him, unless it can be supposed that a man by the very same title can come to be under the "natural and absolute dominion" of two different men at once; or it be sense to say that a man by birth is under the natural dominion of his father only because he begat him, and a man by birth also is under the natural dominion of his eldest brother, though he did not beget him.

75. If, then, the private dominion of Adam, *i.e.*, his property in the creatures, descended at his death all entirely to his eldest son, his heir — for if it did not there is presently an end of all Sir Robert's monarchy

— and his natural dominion, the dominion a father has over his children by begetting them, belonged immediately upon Adam's decease equally to all his sons who had children by the same title their father had it, the sovereignty founded upon property and the sovereignty founded upon fatherhood come to be divided, since Cain, as heir, had that of property alone, Seth and the other sons that of fatherhood equally with him. This is the best can be made of our author's doctrine, and of the two titles of sovereignty he sets up in Adam: one of them will either signify nothing, or, if they both must stand, they can serve only to confound the rights of princes and disorder government in his posterity; for by building upon two titles to dominion which cannot descend together, and which he allows may be separated — for he yields that "Adam's children had their distinct territories by right of private dominion" (*O. p. 210*)² — he makes it perpetually a doubt upon his principles where the sovereignty is or to whom we owe our obedience, since "fatherhood" and "property" are distinct titles and began presently upon Adam's death to be in distinct persons. And which then was to give way to the other?

76. Let us take the account of it as he himself gives it us. He tells us, out of Grotius, that —

Adam's children by donation, assignation, or some kind of cession before he was dead, had their distinct territories by right of private dominion; Abel had his flocks and pastures for them, Cain had his fields for corn and the land of Nod where he built him a city (*O. p. 210*).

Here it is obvious to demand which of these two, after Adam's death, was sovereign? "Cain," says our author.³ By what title? "As heir"; for "heirs to progenitors, who were natural parents of their people, are not only lords of their own children, but also of their brethren," says our author.⁴ What was Cain heir to? Not the entire possessions, not all that which Adam had private dominion in; for our author allows that Abel, by a title derived from his father, "had his distinct territory for pasture by right of private dominion." What then Abel had by private dominion was exempt from Cain's dominion; for he could not have private dominion over that which was under the private dominion of another, and therefore his sovereignty over his brother is gone with this

² [*P. p. 266*]

³ [*P. p. 258*]

⁴ [*P. p. 258*]

private dominion; and so there are presently two sovereigns, and his imaginary title of fatherhood is out of doors, and Cain is no prince over his brother or else, if Cain retain his sovereignty over Abel, notwithstanding his private dominion, it will follow that the "first grounds and principles of government" have nothing to do with property, whatever our author says to the contrary. It is true Abel did not outlive his father Adam; but that makes nothing to the argument, which will hold good against Sir Robert in Abel's issue, or in Seth, or any of the posterity of Adam not descended from Cain.

77. The same inconvenience he runs into about the three sons of Noah, who, as he says,⁵ "had the whole world divided amongst them by their father." I ask, then, in which of the three we shall find "the establishment of regal power" after Noah's death? If in all three, as our author there seems to say, then it will follow that regal power is founded in property of land and follows private dominion, and not in paternal power or natural dominion; and so there is an end of paternal power as the fountain of regal authority, and the so much magnified fatherhood quite vanishes. If the regal power descended to Shem, as eldest and heir to his father, then "Noah's division of the world by lot to his sons or his ten years' sailing about the Mediterranean to appoint each son his part," which our author tells of,⁶ was labour lost. His division of the world to them was to ill or to no purpose; for his grant to Cham and Japhet was little worth if Shem, notwithstanding this grant, as soon as Noah was dead was to be lord over them. Or if this grant of private dominion to them over their assigned territories were good, here were set up two distinct sorts of power, not subordinate one to the other, with all those inconveniences which he musters up against the "power of the people", which I shall set down in his own words, only changing "property" for "people":

All power on earth is either derived or usurped from the fatherly power, there being no other original to be found of any power whatsoever; for if there should be granted two sorts of power, without any subordination of one to the other, they would be in perpetual strife which should be supreme, for two supremes cannot agree. If the fatherly power be supreme, then the power grounded on private dominion must be subordinate and depend on it; and if the power grounded on property be supreme, then the fatherly power must submit to it and cannot be exercised without the licence of the

⁵ [P. p. 256]

⁶ [P. p. 256]

proprieters, which must quite destroy the frame and course of nature (*O. p.* 158).

This is his own arguing against two distinct independent powers, which I have set down in his own words, only putting power rising from property for "power of the people"; and when he has answered what he himself has urged here against two distinct powers, we shall be better able to see how, with any tolerable sense, he can derive all regal authority from "the natural and private dominion of Adam," from "fatherhood" and "property" together, which are distinct titles that do not always meet in the same persons and, it is plain by his own confession, presently separated as soon both as Adam's and Noah's death made way for succession, though our author frequently in his writings jumbles them together, and omits not to make use of either where he thinks it will sound best to his purpose. But the absurdities of this will more fully appear in the next chapter, where we shall examine the ways of conveyance of the sovereignty of Adam to princes that were to reign after him.

CHAPTER VIII

OF THE CONVEYANCE OF ADAM'S SOVEREIGN MONARCHICAL POWER

78. SIR ROBERT, having not been very happy in any proof he brings for the sovereignty of Adam, is not much more fortunate in conveying it to future princes, who, if his politics be true, must all derive their titles from that first monarch. The ways he has assigned, as they lie scattered up and down in his writings, I will set down in his own words. In his preface he tells us that—

Adam being monarch of the whole world, none of his posterity had any right to possess anything but by his grant or permission, or by succession from him.

Here he makes two ways of conveyance of anything Adam stood possessed of, and those are grants or succession. Again he says:

All kings either are, or are to be reputed, the next heirs to those first progenitors, who were at first the natural parents of the whole people.¹ . . . There cannot be any multitude of men whatsoever but

¹ [*P. p.* 258]

that in it, considered by itself, there is one man amongst them that in nature hath a right to be the king of all the rest, as being the next heir to Adam (*O.* p. 253).

Here, in these places, inheritance is the only way he allows of conveying monarchical power to princes. In other places he tells us:

All power on earth is either derived or usurped from the family power (*O.* p. 158). . . . All kings that now are, or ever were, are or were either fathers of their people, or heirs of such fathers, or usurpers of the right of such fathers (*O.* p. 253).

And here he makes inheritance or usurpation the only way whereby kings come by this original power, but yet he tells us:

This fatherly empire, as it was of itself hereditary, so it was alienable by patent and seizable by an usurper (*O.* p. 190).

So then here inheritance, grant, or usurpation will convey it. And last of all, which is most admirable, he tells us:

It skills not which way kings come by their power, whether by election, donation, succession, or by any other means; for it is still the manner of the government by supreme power that makes them properly kings, and not the means of obtaining their crowns.²

Which I think is a full answer to all his whole hypothesis and discourse about Adam's royal authority as the fountain from which all princes were to derive theirs; and he might have spared the trouble of speaking so much as he does, up and down, of heirs and inheritance, if to make any one properly a king needs no more but "governing by supreme power, and it matters not by what means he came by it."

79. By this notable way our author may make Oliver³ as properly king as any one else he could think of; and had he had the happiness to live under Massaniello's government,⁴ he could not by this his own rule have forbore to have done homage to him with "O king live for ever," since the manner of his government by supreme power made him properly king who was but the day before properly a fisherman. And if Don Quixote had taught his squire to govern with supreme authority, our author no doubt could have made a most loyal subject in Sancho Pancha's island; he must needs have deserved some prefer-

² [*P.* p. 290]

³ [Reference is here to Oliver Cromwell (1599-1658), the leader of the Puritans and subsequent ruler of the Commonwealth.]

⁴ [The fisherman, Tomaso Aniello, called Masaniello, conducted a brief insurrection in Naples, then under the control of Spain, in 1647.]

ment in such governments, since I think he is the first politician who, pretending to settle government upon its true basis and to establish the thrones of lawful princes, ever told the world that he was "properly a king whose manner of government was by supreme power by what means soever he obtained it," which in plain English is to say that regal and supreme power is properly and truly his who can by any means seize upon it; and if this be to be properly a king, I wonder how he came to think of, or where he will find, an usurper.

80. This is so strange a doctrine that the surprise of it hath made me pass by, without their due reflection, the contradictions he runs into by making sometimes inheritance alone, sometimes only grant or inheritance, sometimes only inheritance or usurpation, sometimes all these three, and, at last, election or any other means added to them, the ways whereby Adam's royal authority — that is, his right to supreme rule — could be conveyed down to future kings and governors, so as to give them a title to the obedience and subjection of the people. But these contradictions lie so open that the very reading of our author's own words will discover them to any ordinary understanding; and though what I have quoted out of him — with abundance more of the same strain and coherence which might be found in him — might well excuse me from any further trouble in this argument. Yet, having proposed to myself to examine the main parts of his doctrine, I shall a little more particularly consider how "inheritance," "grant," "usurpation," or "election," can any way make out government in the world upon his principles or derive to any one a right of empire from this regal authority of Adam, had it been ever so well proved that he had been absolute monarch and lord of the whole world.

CHAPTER IX

OF MONARCHY BY INHERITANCE FROM ADAM

81. THOUGH IT BE ever so plain that there ought to be government in the world,¹ nay, should all men be of our author's mind that divine

¹ [The rationalism developed by Locke on the basis of natural law ultimately led to the doctrine of philosophic anarchy. Locke, himself a moderate constitu-

appointment had ordained it to be "monarchical," yet, since men cannot obey anything that cannot command, and ideas of government in the fancy, though ever so perfect, though ever so right, cannot give laws nor prescribe rules to the actions of men, it would be of no behoof for the settling of order and establishment of government in its exercise and use amongst men, unless there were a way also taught how to know the person to whom it belonged to have this power and exercise this dominion over others. It is in vain, then, to talk of subjection and obedience without telling us whom we are to obey; for were I ever so fully persuaded that there ought to be magistracy and rule in the world, yet I am nevertheless at liberty still till it appears who is the person that hath right to my obedience; since, if there be no marks to know him by and distinguish him that hath right to rule from other men, it may be myself as well as any other; and, therefore, though submission to government be everyone's duty, yet since that signifies nothing but submitting to the direction and laws of such men as have authority to command, it is not enough to make a man a subject to convince him that there is regal power in the world, but there must be ways of designing and knowing the person to whom this regal power of right belongs; and a man can never be obliged in conscience to submit to any power, unless he can be satisfied who is the person who has a right to exercise that power over him.² If this were not so, there would be no distinction between pirates and lawful princes. He that has force is without any more ado to be obeyed, and crowns and sceptres would become the inheritance only of violence and rapine. Men, too, might as often and as innocently change their governors as they do their physicians, if the person cannot be known who has a right to direct me and whose prescriptions I am bound to follow. To settle, therefore, men's consciences under

tionalist, insisted on the practical need as well as the desirability of government. The fact of government as omnipresent in human society could not, however, be demonstrated by the analytical and rationalist, as against an historical and sociological, approach.]

² [The major merit of Locke, and of the whole school of natural law with natural rights, was in their insistence on the divorce between the ethical justification of authority and the actual and historical basis of authority. As here became plain, Locke, in combatting Filmer's argument in which the two were combined, was doing more than attacking Filmer's particular claims of fact. He was undermining the whole argument drawn from origins as a basis of political obligation.]

an obligation to obedience, it is necessary that they know not only that there is a power somewhere in the world, but the person who by right is vested with this power over them.

82. How successful our author has been in his attempts to set up a monarchical absolute power in Adam, the reader may judge by what has been already said; but were that absolute monarchy as clear as our author would desire it, as I presume it is the contrary, yet it could be of no use to the government of mankind now in the world, unless he also make out these two things:

First, That this power of Adam was not to end with him, but was upon his decease conveyed entire to some other person, and so on to posterity.

Secondly, That the princes and rulers now on earth are possessed of this power of Adam by a right way of conveyance derived to them.

83. If the first of these fail, the power of Adam, were it ever so great, ever so certain, will signify nothing to the present government and societies in the world; but we must seek out some other original of power for the government of polities than this of Adam, or else there will be none at all in the world. If the latter fail, it will destroy the authority of the present governors and absolve the people from subjection to them, since they, having no better claim than others to that power which is alone the fountain of all authority, can have no title to rule over them.

84. Our author, having fancied an absolute sovereignty in Adam, mentions several ways of its conveyance to princes that were to be his successors; but that which he chiefly insists on is that of inheritance, which occurs so often in his several discourses; and I having in the foregoing chapter quoted several of his passages, I shall not need here again to repeat them. This sovereignty he erects, as has been said, upon a double foundation, viz., that of "property" and that of "fatherhood." One was the right he was supposed to have in all creatures, a right to possess the earth, with the beasts and other inferior ranks of things in it, for his private use, exclusive of all other men. The other was the right he was supposed to have to rule and govern men, all the rest of mankind.

85. In both these rights, there being supposed an exclusion of all other men, it must be upon some reason peculiar to Adam that they must both be founded.

That of his property our author supposes to rise from God's immediate donation (Gen. i. 28), and that of fatherhood from the act of begetting. Now in all inheritance, if the heir succeed not to the reason upon which his father's right was founded, he cannot succeed to the right which followeth from it. For example, Adam had a right of property in the creatures upon the donation and grant of God Almighty Who was Lord and Proprietor of them all — let this be so as our author tells us. Yet upon his death his heir can have no title to them, no such right of property in them, unless the same reason — viz., God's donation — vested a right in the heir too;³ for if Adam could have no property in, nor use of the creatures without, this positive donation from God, and this donation were only personally to Adam, his heir could have no right by it, but upon his death it must revert to God, the Lord and Owner, again; for positive grants give no title farther than the express words convey it, and by which only it is held. And thus, if, as our author himself contends, that donation (Gen. i. 28), were made only to Adam personally, his heir could not succeed to his property in the creatures; and if it were a donation to any but Adam, let it be shown that it was to his heir in our author's sense, *i. e.*, to one of his children exclusive of all the rest.

86. But not to follow our author too far out of the way, the plain of the case is this: God having made man, and planted in him, as in all other animals, a strong desire of self-preservation, and furnished the world with things fit for food and raiment and other necessities of life, subservient to His design that man should live and abide for some time upon the face of the earth, and not that so curious and wonderful a piece of workmanship by his own negligence or want of necessities should perish again presently, after a few moments continuance—God, I say, having made man and the world thus, spoke to him, that is, directed him by his senses and reason, as he did the inferior animals by their sense and instinct, which were serviceable for his subsistence and given him as the means of his preservation; and, therefore, I doubt not but before these words were pronounced

³ [While Locke is, no doubt, technically right in his claim that a specific gift does not constitute a law of inheritance, nevertheless Filmer was properly stressing a social system of inheritance as part of a system of institutions. The limitations of Locke largely came from his individualist analysis and his failure adequately to stress the web of institutions that makes society.]

(Gen. i. 28, 29) — if they must be understood literally to have been spoken — and without any such verbal donation, man had a right to an use of the creatures by the will and grant of God; for the desire, strong desire of preserving his life and being, having been planted in him as a principle of action by God himself, reason, “which was the voice of God in him,” could not but teach him and assure him that, pursuing that natural inclination he had to preserve his being, he followed the will of his Maker, and therefore had a right to make use of those creatures which by his reason or senses he could discover would be servicable thereunto. And thus man’s property in the creatures was founded upon the right he had to make use of those things that were necessary or useful to his being.⁴

87. This, being the reason and foundation of Adam’s property, gave the same title, on the same ground, to all his children, not only after his death, but in his lifetime; so that here was no privilege of his heir above his other children which could exclude them from an equal right to the use of the inferior creatures for the comfortable preservation of their beings, which is all the property man hath in them; and so Adam’s sovereignty built on property, or, as our author calls it, private dominion, comes to nothing. Every man had a right to the creatures by the same title Adam had, viz., by the right every one had to take care of, and provide for, their subsistence; and thus men had a right in common, Adam’s children in common with him. But if any one had begun and made himself a property in any particular thing — which how he or any one else could do shall be shown in another place — that thing, that possession, if he disposed not otherwise of it by his positive grant, descended naturally to his children, and they had a right to succeed to it and possess it.⁵

88. It might reasonably be asked here how come children by this

⁴ [Here Locke propounds one part of his total theory of property. In Book II he emphasizes labor as the source of property. Here he comes much closer to the theory of property, orthodox until his time, as a means to human survival and development. The two views were never fully integrated in him. Rather he represents a transition from the ethical justification of property out of human need to the later economic theory of property on the basis of production.]

⁵ [Here Locke defends both the doctrine of inheritance of property and the free testamentary disposition of property. It was by combining these doctrines, not necessarily implied by the theory of property as the product of labor, that the

right of possessing, before any other, the properties of their parents upon their decease? For it being personally the parents', when they die without actually transferring their right to another, why does it not return again to the common stock of mankind? It will perhaps be answered that common consent hath disposed of it to their children. Common practice, we see, indeed, does so dispose of it; but we cannot say that it is the common consent of mankind, for that hath never been asked nor actually given; and if common tacit consent hath established it, it would make but a *positive* and not a *natural* right of children to inherit the goods of their parents; but where the practice is universal, it is reasonable to think the cause is natural. The ground, then, I think to be this: the first and strongest desire God planted in men, and wrought into the very principles of their nature, being that of self-preservation, that is the foundation of a right to the creatures for the particular support and use of each individual person himself. But, next to this, God planted in men a strong desire also of propagating their kind and continuing themselves in their posterity, and this gives children a title to share in the property of their parents and a right to inherit their possessions. Men are not proprietors of what they have merely for themselves; their children have a title to part of it, and have their kind of right joined with their parents' in the possession which comes to be wholly theirs, when death, having put an end to their parents' use of it, hath taken them from their possessions; and this we call inheritance.⁶ Men being by a like obligation

modern capitalist and free enterprise system gained its rationale. The two were not automatically compatible, and the Marxist theory developed through a divorce between the two, and by arguing their exclusiveness and incompatibility.]

⁶ [In a preceding section Locke had condemned Filmer for his attempt to conjoin parenthood and property (Section 77). Here he himself does conjoin them and, in so doing, gives a possible link between the labor theory of property and the right of inheritance by children of property they themselves have not created, by making propagation a basis of a claim to inheritance by those created without their will. Curiously enough, however, Locke does place the right in the children, rather than stressing the paternal motivation to labor as provision for those children, which, as defenders of inheritance later perceived, was a much stronger ground. In this same section, it is to be noted that Locke himself makes a somewhat vague reference to God as a sanction for his doctrine, as well as basing it on the laws of a particular land. Here, as elsewhere, Locke tends to tie together natural law, common sense, and the actual civil law under which he lived. While the

bound to preserve what they have begotten, as to preserve themselves, their issue come to have a right in the goods they are possessed of. That children have such a right is plain from the laws of God; and that men are convinced that children have such a right is evident from the law of the land, both which laws require parents to provide for their children.

89. For children being by the course of nature born weak and unable to provide for themselves, they have by the appointment of God himself, who hath thus ordered the course of nature, a right to be nourished and maintained by their parents; nay, a right not only to a bare subsistence, but to the conveniences and comforts of life as far as the conditions of their parents can afford it. Hence it comes that when their parents leave the world, and so the care due to their children ceases, the effects of it are to extend as far as possibly they can, and the provisions they have made in their lifetime are understood to be intended, as nature requires they should, for their children, whom after themselves they are bound to provide for; though the dying parents, by express words, declare nothing about them, nature appoints the descent of their property to their children, who thus come to have a title and natural right of inheritance to their father's goods, which the rest of mankind cannot pretend to.

90. Were it not for this right of being nourished and maintained by their parents, which God and nature has given to children and obliged parents to as a duty, it would be reasonable that the father should inherit the estate of his son and be preferred in the inheritance before his grandchild; for to the grandfather there is due a long score of care and expenses laid out upon the breeding and education of his son, which one would think in justice ought to be paid. But that having been done in obedience to the same law whereby he received nourishment and education from his own parents, this score of education, received from a man's father, is paid by taking care and providing for his own children — is paid, I say, as much as is required of payment by alteration of property, unless present necessity of the parents require a return of goods for their necessary support and

identification is hardly warranted, it was through his tendency to provide a supposedly purely rationalistic basis for what were actually going legal and social institutions that Locke avoided the danger of an extreme *a priori* rationalism. And it was this that accounted for his great success in both England and in America.]

subsistence — for we are not now speaking of that reverence, acknowledgment, respect, and honour that is always due from children to their parents, but of possessions and commodities of life valuable by money. But though it be incumbent on parents to bring up and provide for their children, yet this debt to their children does not quite cancel the score to their parents, but only is made by nature preferable to it; for the debt a man owes his father takes place and gives the father a right to inherit the son's goods where, for want of issue, the right of issue doth not exclude that title; and therefore a man having a right to be maintained by his children where he needs it, and to enjoy also the comforts of life from them when the necessary provision due to them and their children will afford it, if his son die without issue, the father has a right in nature to possess his goods and inherit his estate — whatever the municipal laws of some countries may absurdly direct otherwise — and so again his children and their issue from him, or, for want of such, his father and his issue. But where no such are to be found, *i. e.*, no kindred, there we see the possessions of a private man revert to the community, and so in politic societies come into the hands of the public magistrate, but in the state of nature become again perfectly common, nobody having a right to inherit them, nor can any one have a property in them otherwise than in any other things common by nature, of which I shall speak in its due place.

91. I have been the larger in showing upon what ground children have a right to succeed to the possession of their fathers' properties, not only because by it, it will appear that if Adam had a property — a titular, insignificant, useless property; for it could be no better, for he was bound to nourish and maintain his children and posterity out of it — in the whole earth and its product, yet all his children coming to have, by the law of nature and right of inheritance, a joint title and a right of property in it after his death, it could convey no right of sovereignty to any one of his posterity over the rest; since every one having a right of inheritance to his portion, they might enjoy their inheritance or any part of it in common, or share it, or some parts of it, by division, as it best liked them. But no one could pretend to the whole inheritance or any sovereignty supposed to accompany it, since a right of inheritance gave every one of the rest, as well as any one, a title to share in the goods of his father. Not only upon this account, I say, have I been so particular in examining the reason of

children's inheriting the property of their fathers, but also because it will give us further light in the inheritance of rule and power, which in countries where their particular municipal laws give the whole possession of land entirely to the first-born, and descent of power has gone so to men by this custom, that some have been apt to be deceived into an opinion that there was a natural or divine right of primogeniture to both estate and power, and that the inheritance of both "rule over men" and "property in things" sprang from the same original and were to descend by the same rules.

92. Property, whose original is from the right a man has to use any of the inferior creatures for the subsistence and comfort of his life, is for the benefit and sole advantage of the proprietor, so that he may even destroy the thing that he has property in by his use of it, where need requires; but government, being for the preservation of every man's right and property by preserving him from the violence or injury of others, is for the good of the governed; for the magistrate's sword, being for a "terror to evil doers," and by that terror to enforce men to observe the positive laws of the society made conformable to the laws of nature for the public good, *i. e.*, the good of every particular member of that society, as far as by common rules it can be provided for — the sword is not given the magistrate for his own good alone.⁷

93. Children, therefore, as has been shown, by the dependence they have upon their parents for subsistence, have a right of inheritance to their father's property as that which belongs to them for their proper good and behoof, and therefore are fitly termed goods wherein the first-born has not a sole or peculiar right by any law of God and nature, the younger children having an equal title with him, founded on that right they all have to maintenance, support, and comfort from their parents, and on nothing else. But government, being for the benefit of the governed and not the sole advantage of the governors — but only for theirs with the rest, as they make a part

⁷ [Here Locke clearly denies that property is created by the government and, in his statement of a right to destroy it, also denied the social element in the creation of property, the major defect in his analysis. Already here he emphasizes that government, while not the creator of property, has the major function of protecting it. This denial that government or society created property, combined with this insistence on their primary duty to protect it, afforded a basis for the *laissez-faire* state.]

of that politic body, each of whose parts and members are taken care of and directed in its peculiar functions for the good of the whole by the laws of society — cannot be inherited by the same title that children have to the goods of their father. The right a son has to be maintained and provided with the necessaries and conveniences of life out of his father's stock gives him a right to succeed to his father's property for his own good; but this can give him no right to succeed also to the rule which his father had over other men. All that a child has right to claim from his father is nourishment and education and the things nature furnishes for the support of life; but he has no right to demand rule or dominion from him. He can subsist and receive from him the portion of good things and advantages of education naturally due to him without empire and dominion. That, if his father hath any, was vested in him for the good and behoof of others, and therefore the son cannot claim or inherit it by a title which is founded wholly on his own private good and advantage.

94. We must know how the first ruler from whom anyone claims came by his authority, upon what ground any one has empire, what his title is to it, before we can know who has a right to succeed him in it and inherit it from him. If the agreement and consent of men first gave a sceptre into any one's hand or put a crown on his head, that also must direct its descent and conveyance; for the same authority that made the first a lawful ruler must make the second too, and so give right of succession. In this case inheritance or primogeniture can in itself have no right, no pretence to it, any further than that consent which established the form of the government hath so settled the succession. And thus we see the succession of crowns, in several countries, places it on different heads, and he comes by right of succession to be a prince in one place who would be a subject in another.

95. If God, by his positive grant and revealed declaration, first gave rule and dominion to any man, he that will claim by that title must have the same positive grant of God for his succession; for if that has not directed the course of its descent and conveyance down to others, nobody can succeed to this title of the first ruler. Children have no right of inheritance to this, and primogeniture can lay no claim to it, unless God, the Author of this constitution, hath so ordained it. Thus we see the pretensions of Saul's family, who received his crown from the immediate appointment of God, ended with his reign;

and David, by the same title that Saul reigned, viz., God's appointment, succeeded in his throne to the exclusion of Jonathan and all pretensions of paternal inheritance; and if Solomon had a right to succeed his father, it must be by some other title than that of primogeniture. A cadet, or sister's son, must have the preference in succession if he has the same title the first lawful prince had; and in dominion that has its foundation only in the positive appointment of God himself, Benjamin, the youngest, must have the inheritance of the crown if God so direct, as well as one of that tribe had the first possession.

96. If paternal right, the act of begetting, give a man rule and dominion, inheritance or primogeniture can give no title; for he that cannot succeed to his father's title, which was begetting, cannot succeed to that power over his brethren which his father had by paternal right over them. But of this I shall have occasion to say more in another place. This is plain, in the meantime, that any government, whether supposed to be at first founded in paternal right, consent of the people, or the positive appointment of God himself, which can supersede either of the other and so begin a new government upon a new foundation — I say, any government begun upon either of these can by right of succession come to those only who have the title of him they succeed to. Power founded on contract can descend only to him who has right by that contract; power founded on begetting, he only can have that begets; and power founded on the positive grant or donation of God, he only can have by right of succession to whom that grant directs it.

97. From what I have said, I think this is clear: that a right to the use of the creatures being founded originally in the right a man has to subsist and enjoy the conveniences of life, and the natural right children have to inherit the goods of their parents being founded in the right they have to the same subsistence and commodities of life out of the stock of their parents, who are therefore taught by natural love and tenderness to provide for them as a part of themselves; and all this being only for the good of the proprietor or heir, it can be no reason for children's inheriting of rule and dominion which has another original and a different end, nor can primogeniture have any pretence to a right of solely inheriting either property or power, as we shall, in its due place, see more fully. It is enough to have shown here that Adam's property or private dominion could not convey any

sovereignty or rule to his heir, who, not having a right to inherit all his father's possessions, could not thereby come to have any sovereignty over his brethren; and, therefore, if any sovereignty on account of his property had been vested in Adam, which in truth there was not, yet it would have died with him.

98. As Adam's sovereignty, if by virtue of being proprietor of the world he had any authority over men, could not have been inherited by any of his children over the rest because they had the same title to divide the inheritance, and every one had a right to a portion of his father's possessions; so neither could Adam's sovereignty by right of fatherhood, if any such he had, descend to any one of his children; for it being, in our author's account, a right acquired by begetting to rule over those he had begotten, it was not a power possible to be inherited because the right, being consequent to and built on an act perfectly personal, made that power so, too, and impossible to be inherited; for paternal power, being a natural right rising only from the relation of father and son, is as impossible to be inherited as the relation itself. And a man may pretend as well to inherit the conjugal power the husband, whose heir he is, had over his wife, as he can to inherit the paternal power of a father over his children; for the power of the husband being founded on contract, and the power of the father on begetting, he may as well inherit the power obtained by the conjugal contract, which was only personal, as he may the power obtained by begetting, which could reach no farther than the person of the begetter, unless begetting can be a title to power in him that does not beget.

99. Which makes it a reasonable question to ask whether, Adam dying before Eve, his heir—suppose Cain or Seth—should have, by right of inheriting Adam's fatherhood, sovereign power over Eve his mother. For Adam's fatherhood being nothing but a right he had to govern his children because he begot them, he that inherits Adam's fatherhood inherits nothing, even in our author's sense, but the right Adam had to govern his children because he begot them; so that the monarchy of the heir would not have taken in Eve, or, if it did, it being nothing but the fatherhood of Adam descended by inheritance, the heir must have right to govern Eve because Adam begot her, for fatherhood is nothing else.

100. Perhaps it will be said with our author that a man can alien

his power over his child, and what may be transferred by compact may be possessed by inheritance. I answer: a father cannot alien the power he has over his child; he may, perhaps, to some degrees forfeit it but cannot transfer it; and if any other man acquire it, it is not by the father's grant but by some act of his own. For example, a father, unnaturally careless of his child, sells or gives him to another man, and he again exposes him; a third man, finding him, breeds him up, cherishes, and provides for him as his own, I think in this case nobody will doubt but that the greatest part of filial duty and subjection was here owing, and to be paid to, this foster-father; and if anything could be demanded from the child by either of the other, it could be only due to his natural father, who perhaps might have forfeited his right to much of that duty comprehended in the command, "Honour your parents," but could transfer none of it to another. He that purchased and neglected the child got by his purchase and grant of the father no title to duty or honour from the child; but only he acquired it who, by his own authority performing the office and care of a father to the forlorn and perishing infant, made himself, by paternal care, a title to proportionable degrees of paternal power. This will be more easily admitted upon consideration of the nature of paternal power, for which I refer my reader to the Second Book.

101. To return to the argument in hand, this is evident: that paternal power arising only from begetting — for in that our author places it alone — can neither be transferred nor inherited; and he that does not beget can no more have paternal power, which arises from thence, than he can have a right to anything who performs not the condition to which only it is annexed. If one should ask by what law has a father power over his children, it will be answered, no doubt, "by the law of nature," which gives such a power over them to him that begets them. If one should ask likewise by what law does our author's heir come by a right to inherit, I think it would be answered, "by the law of nature," too; for I find not that our author brings one word of Scripture to prove the right of such an heir he speaks of. Why, then, the law of nature gives fathers paternal power over their children because they did beget them, and the same law of nature gives the paternal power to the heir over his brethren who did not beget them; whence it follows that either the father has not his paternal power by begetting, or else that the heir has it not at all; for it is hard

to understand how the law of nature, which is the law of reason, can give the paternal power to the father over his children, for the only reason of begetting, and to the first-born over his brethren without this only reason, *i. e.*, for no reason at all. And if the eldest, by the law of nature, can inherit this paternal power without the only reason that gives a title to it, so may the youngest as well as he, and a stranger as well as either; for where there is no reason for any one, as there is not but for him that begets, all have an equal title. I am sure our author offers no reason; and when anybody does, we shall see whether it will hold or no.

102. In the meantime, it is as good sense to say that by the law of nature a man has right to inherit the property of another because he is of kin to him and is known to be of his blood, and, therefore, by the same law of nature an utter stranger to his blood has right to inherit his estate, as to say that by the law of nature he that begets them has paternal power over his children, and, therefore, by the law of nature the heir that begets them not has this paternal power over them. Or supposing the law of the land gave absolute power over their children to such only who nursed them and fed their children themselves, could anybody pretend that this law gave anyone who did no such thing absolute power over those who were not his children?

103. When, therefore, it can be shown that conjugal power can belong to him that is not an husband, it will also, I believe, be proved that our author's paternal power, acquired by begetting, may be inherited by a son, and that a brother, as heir to his father's power, may have paternal power over his brethren and by the same rule conjugal power, too; but, till then, I think we may rest satisfied that the paternal power of Adam — this sovereign authority of fatherhood — were there any such, could not descend to, nor be inherited by his next heir. Fatherly power, I easily grant our author, if it will do him any good, can never be lost, because it will be as long in the world as there are fathers; but none of them will have Adam's paternal power, or derive theirs from him; but every one will have his own, by the same title Adam had his, *viz.*, by begetting, but not by inheritance or succession, no more than husbands have their conjugal power by inheritance from Adam. And thus we see, as Adam had no such "property," no such "paternal power" as gave him sovereign jurisdiction over mankind, so likewise his sovereignty built upon either

of these titles, if he had any such, could not have descended to his heir but must have ended with him. Adam, therefore, as has been proved, being neither monarch, nor his imaginary monarchy hereditary, the power which is now in the world is not that which was Adam's; since all that Adam could have upon our author's grounds, either of "property" or "fatherhood," necessarily died with him, and could not be conveyed to posterity by inheritance. In the next place we will consider whether Adam had any such heir to inherit his power as our author talks of.

CHAPTER X

OF THE HEIR TO ADAM'S MONARCHICAL POWER

104. OUR AUTHOR tells us: "That it is a truth undeniable that there cannot be any multitude of men whatsoever, either great or small, though gathered together from the several corners and remotest regions of the world, but that in the same multitude, considered by itself, there is one man amongst them that in nature hath a right to be king of all the rest as being the next heir to Adam, and all the other subjects to him — every man by nature is a king or a subject" (*O.* p. 253). And again, "If Adam himself were still living and now ready to die, it is certain that there is one man, and but one man in the world who is next heir."¹ Let this multitude of men be, if our author pleases, all the princes upon the earth, there will then be, by our author's rule, "one amongst them that in nature hath a right to be king of all the rest, as being the right heir to Adam" — an excellent way to establish the thrones of princes and settle the obedience of their subjects by setting up an hundred, or perhaps a thousand, titles, if there be so many princes in the world, against any king now reigning, each as good, upon our author's grounds, as his who wears the crown. If this right of heir carry any weight with it, if it be the ordinance of God, as our author seems to tell us (*O.* p. 244), must not all be subject to it, from the highest to the lowest? Can those who wear the name

¹ [*P.* p. 259]

of princes, without having the right of being heirs to Adam, demand obedience from their subjects by this title and not be bound to pay it by the same law? Either governments in the world are not to be claimed and held by this title of Adam's heir, and then the starting of it is to no purpose, the being or not being Adam's heir signifies nothing as to the title of dominion; or, if it really be, as our author says, the true title to government and sovereignty, the first thing to be done is to find out this true heir of Adam, seat him in his throne, and then all the kings and princes of the world ought to come and resign up their crowns and sceptres to him, as things that belong no more to them than to any of their subjects.

105. For either this right in nature of Adam's heir to be king over all the race of men — for all together they make one "multitude"— is a right not necessary to the making of a lawful king, and so there may be lawful kings without it, and then kings' titles and powers depend not on it; or else all the kings in the world but one are not lawful kings, and so have no right to obedience. Either this title of heir to Adam is that whereby kings hold their crowns and have a right to subjection from their subjects, and then one only can have it, and the rest, being subjects, can require no obedience from other men who are but their fellow subjects; or else it is not the title whereby kings rule and have a right to obedience from their subjects, and then kings are kings without it, and this dream of the natural sovereignty of Adam's heir is of no use to obedience and government. For if kings have a right to dominion and the obedience of their subjects, who are not, nor can possibly be, heirs to Adam, what use is there of such a title, when we are obliged to obey without it? If kings who are not heirs to Adam have no right to sovereignty, we are all free till our author, or anybody for him, will show us Adam's right heir. If there be but one heir of Adam, there can be but one lawful king in the world, and nobody in conscience can be obliged to obedience till it be resolved who that is; for it may be anyone who is not known to be of a younger house, and all others have equal titles. If there be more than one heir of Adam, everyone is his heir, and so everyone has regal power; for if two sons can be heirs together, then all the sons equally are heirs, and so all are heirs, being all sons, or sons' sons of Adam. Betwixt these two, the right of heir cannot stand; for by it either but one only man or all men are kings. Take which you please,

it dissolves the bonds of government and obedience; since if all men are heirs, they can owe obedience to nobody; if only one, nobody can be obliged to pay obedience to him till he be known and his title made out.

CHAPTER XI

WHO HEIR?

106. THE GREAT QUESTION which in all ages has disturbed mankind, and brought on them the greatest part of those mischiefs which have ruined cities, depopulated countries, and disordered the peace of the world, has been, not whether there be power in the world, nor whence it came, but who should have it. The settling of this point being of no smaller moment than the security of princes and the peace and welfare of their estates and kingdoms, a reformer of politics, one would think, should lay this sure and be very clear in it; for if this remain disputable, all the rest will be to very little purpose, and the skill used in dressing up power with all the splendour and temptation absoluteness can add to it, without showing who has a right to have it, will serve only to give a greater edge to man's natural ambition, which of itself is but too keen. What can this do but set men on the more eagerly to scramble and so lay a sure and lasting foundation of endless contention and disorder instead of that peace and tranquillity which is the business of government and the end of human society?

107. This designation of the person our author is more than ordinary obliged to take care of, because he, affirming that the "assignment of civil power is by divine institution," hath made the conveyance as well as the power itself sacred; so that no consideration, no act or art of man, can divert it from that person to whom, by this divine right, it is assigned; no necessity or contrivance can substitute another person in his room. For if the "assignment of civil power be by divine institution," and Adam's heir be he to whom it is thus assigned, as in the foregoing chapter our author tells us, it would be as much sacrilege for any one to be king who was not Adam's heir, as it would have been amongst the Jews for any one to have been priest

who had not been of Aaron's posterity; for not only the priesthood "in general being by divine institution, but the assignment of it" to the sole line and posterity of Aaron made it impossible to be enjoyed or exercised by any one but those persons who were the offspring of Aaron, whose succession therefore was carefully observed, and by that the persons who had a right to the priesthood certainly known.

108. Let us see, then, what care our author has taken to make us know who is "this heir who by divine institution has a right to be king over all men." The first account of him we meet with is in these words:

'This subjection of children being the fountain of all regal authority, by the ordination of God himself, it follows that civil power, not only in general, is by divine institution, but even the assignment of it specifically to the "eldest parents."¹

Matters of such consequence as this is should be in plain words, as little liable as might be to doubt or equivocation; and I think, if language be capable of expressing anything distinctly and clearly. that of kindred, and the several degrees of nearness of blood, is one, It were, therefore, to be wished that our author had used a little more intelligible expressions here, that we might have better known who it is to whom the assignment of civil power is made by divine institution; or at least would have told us what he meant by eldest parents; for, I believe, if land had been assigned or granted to him and the eldest parents of his family, he would have thought it had needed an interpreter, and it would scarce have been known to whom next it belonged.

109. In propriety of speech — and certainly propriety of speech is necessary in a discourse of this nature — "eldest parents" signifies either the eldest men and women that have had children, or those who have longest had issue; and then our author's assertion will be that those fathers and mothers who have been longest in the world, or longest fruitful, have by divine institution a right to civil power. If there be any absurdity in this, our author must answer for it; and if his meaning be different from my explication, he is to be blamed that he would not speak it plainly. This I am sure, "parents" cannot signify "heirs male," nor "eldest parents" an "infant child," who yet may sometimes be the true heir, if there can be but one. And we are

¹ [P. p. 255]

hereby still as much at a loss who civil power belongs to, notwithstanding this "assignment by divine institution," as if there had been no such an assignment at all, or our author had said nothing of it. This of "eldest parents" leaving us more in the dark who by divine institution has a right to civil power than those who never heard anything at all of heir or descent, of which our author is so full. And though the chief matter of his writing be to teach obedience to those who have a right to it, which he tells us is conveyed by descent, yet who those are to whom this right by descent belongs, he leaves, like the philosopher's stone in politics, out of the reach of any one to discover from his writings.

110. This obscurity cannot be imputed to want of language in so great a master of style as Sir Robert is, when he is resolved with himself what he would say; and, therefore, I fear, finding how hard it would be to settle rules of descent by divine institution, and how little it would be to his purpose, or conduce to the clearing and establishing the titles of princes if such rules of descent were settled, he chose rather to content himself with doubtful and general terms, which might make no ill sound in men's ears who were willing to be pleased with them, rather than offer any clear rules of descent of this fatherhood of Adam, by which men's consciences might be satisfied to whom it descended, and know the persons who had a right to regal power and with it to their obedience.

111. How else is it possible that, laying so much stress as he does upon "descent," and "Adam's heir," "next heir," "true heir," he should never tell us what heir means, nor the way to know who the next or true heir is? This I do not remember he does anywhere expressly handle, but where it comes in his way very warily and doubtfully touches, though it be so necessary that without it all discourses of government and obedience upon his principles would be to no purpose, and fatherly power, ever so well made out, will be of no use to anybody. Hence he tells us:

That not only the constitution of power in general, but the limitation of it to one kind, *i. e.*, monarchy, and the determination of it to the individual person and line of Adam are all three ordinances of God; neither Eve nor her children could either limit Adam's power or join others with him; and what was given unto Adam was given in his person to his posterity (O. p. 244).¹

Here again our author informs us that the divine ordinance hath limited the descent of Adam's monarchical power. To whom? "To Adam's line and posterity," says our author. A notable limitation — a limitation to all mankind; for if our author can find anyone amongst mankind that is not of the line and posterity of Adam, he may perhaps tell him who this next heir of Adam is; but for us I despair how this limitation of Adam's empire to his line and posterity will help us to find out one heir. This limitation, indeed, of our author will save those the labour who would look for him amongst the race of brutes, if any such there were, but will very little contribute to the discovery of one next heir amongst men, though it make a short and easy determination of the question about the descent of Adam's regal power by telling us that the line and posterity of Adam is to have it — that is, in plain English, anyone may have it, since there is no person living that hath not the title of being of the line and posterity of Adam; and while it keeps there, it keeps within our author's limitation by God's ordinance. Indeed, he tells us that "such heirs are not only lords of their own children, but of their brethren";² whereby, and by the words following which we shall consider anon, he seems to insinuate that the eldest son is heir; but he nowhere that I know says it in direct words, but, by the instances of Cain and Jacob that there follow, we may allow this to be so far his opinion concerning heirs, that where there are divers children, the eldest son has the right to be heir. That primogeniture cannot give any title to paternal power we have already shown. That a father may have a natural right to some kind of power over his children is easily granted; but that an elder brother has so over his brethren remains to be proved. God or nature has not anywhere, that I know, placed such jurisdiction in the first-born; nor can reason find any such natural superiority amongst brethren. The law of Moses gave a double portion of the goods and possessions to the eldest; but we find not anywhere that naturally, or by God's institution, superiority or dominion belonged to him; and the instances there brought by our author are but slender proofs of a right to civil power and dominion in the first-born, and do rather show the contrary.

112. His words are in the forecited place: "And therefore we find

² [P. p. 258]

God told Cain of his brother Abel, 'His desire shall be subject unto thee, and thou shalt rule over him.' " To which I answer:

First, these words of God to Cain are by many interpreters with great reason understood in a quite different sense than what our author uses them in.

Secondly, whatever was meant by them it could not be that Cain, as elder, had a natural dominion over Abel; for the words are conditional, "If thou dost well," and so personal to Cain; and whatever was signified by them, did depend on his carriage and not follow his birthright, and therefore could by no means be an establishment of dominion in the first-born in general; for before this Abel had his "distinct territories by right of private dominion," as our author himself confesses (*O. p. 210*), which he could not have had to the prejudice of the heir's title, "if by divine institution" Cain as heir were to inherit all his father's dominion.

Thirdly, if this were intended by God as the charter of primogeniture and the grant of dominion to the elder brothers in general, as such, by right of inheritance, we might expect it should have included all his brethren; for we may well suppose Adam, from whom the world was to be peopled, had, by this time that these were grown up to be men, more sons than these two, whereas Abel himself is not so much as named; and the words in the original can scarce, with any good construction, be applied to him.

Fourthly, it is too much to build a doctrine of so mighty consequence upon so doubtful and obscure a place of Scripture, which may well, nay, better be understood in a quite different sense, and so can be but an ill proof, being as doubtful as the thing to be proved by it, especially when there is nothing else in Scripture or reason to be found that favours or supports it.

113. It follows: "Accordingly when Jacob bought his brother's birthright, Isaac blessed him thus: 'Be lord over thy brethren, and let the sons of thy mother bow before thee.' " ³ Another instance, I take it, brought by our author to evince dominion due to birthright, and an admirable one it is; for it must be no ordinary way of reasoning in a man that is pleading for the natural power of kings and against all compact, to bring for proof of it an example where his own account of it founds all the right upon compact and settles empire in the

³ [*P. p. 258*]

younger brother, unless buying and selling be no compact; for he tells us, "when Jacob bought his birthright." But, passing by that, let us consider the history itself, with what use our author makes of it, and we shall find the following mistakes about it.

First, that our author reports this as if Isaac had given Jacob this blessing immediately upon his purchasing the birthright; for he says, "when Jacob bought, Isaac blessed him," which is plainly otherwise in the Scripture; for it appears there was a distance of time between, and if we will take the story in the order it lies, it must be no small distance—all Isaac's sojourning in Gerar and transactions with Abimelech (Gen. xxvi) coming between, Rebecca being then beautiful and consequently young; but Isaac, when he blessed Jacob, was old and decrepit. And Esau also complains of Jacob (Gen. xxvii. 36) that two times he had supplanted him: "He took away my birthright," says he, "and behold now he hath taken away my blessing"—words that I think signify distance of time and difference of action.

Secondly, another mistake of our author's is that he supposes Isaac gave Jacob the blessing and bid him be "lord over his brethren" because he had the birthright; for our author brings this example to prove that he that has the birthright has thereby a right to be "lord over his brethren." But it is also manifest, by the text, that Isaac had no consideration of Jacob's having bought the birthright; for, when he blessed him, he considered him not as Jacob, but took him for Esau; nor did Esau understand any such connexion between birthright and the blessing; for he says, "He hath supplanted me these two times; he took away my birthright, and behold now he hath taken away my blessing"; whereas had the blessing, which was to be "lord over his brethren," belonged to the birthright, Esau could not have complained of this second as a cheat, Jacob having got nothing but what Esau had sold him when he sold him his birthright; so that, it is plain, dominion, if these words signify it, was not understood to belong to the birthright.

114. And that in those days of the patriarchs dominion was not understood to be the right of the heir, but only a greater portion of goods, is plain from Gen. xxi. 10; for Sarah, taking Isaac to be heir, says, "cast out this bondwoman and her son, for the son of this bondwoman shall not be heir with my son," whereby could be meant nothing but that he should not have a pretence to an equal share of

his father's estate after his death, but should have his portion presently and be gone. Accordingly we read (Gen. xxv. 5, 6) that "Abraham gave all that he had unto Isaac, but unto the sons of the concubines which Abraham had, Abraham gave gifts, and sent them away from Isaac his son, while he yet lived." That is, Abraham having given portions to all his other sons, and sent them away, that which he had reserved, being the greatest part of his substance, Isaac as heir possessed after his death; but by being heir he had no right to be "lord over his children"; for if he had, why should Sarah endeavour to rob him of one of his subjects or lessen the number of his slaves by desiring to have Ishmael sent away?

115. Thus, as under the law the privilege of birthright was nothing but a double portion, so we see that before Moses, in the patriarchs' time, from whence our author pretends to take his model, there was no knowledge, no thought, that birthright gave rule or empire, paternal or kingly authority, to any one over his brethren. If this be not plain enough in the story of Isaac and Ishmael, he that will look into 1 Chron. vs. 1. may there read these words:

Reuben was the first-born, but forasmuch as he defiled his father's bed, his birthright was given unto the sons of Joseph, the son of Israel. and the genealogy is not to be reckoned after the birthright; for Judah prevailed above his brethren, and of him came the chief ruler; but the birthright was Joseph's.

What this birthright was, Jacob, blessing Joseph (Gen. xlviii. 22), telleth us in these words: "Moreover, I have given thee one portion above thy brethren, which I took out of the hand of the Amorite with my sword and with my bow." Whereby it is not only plain that the birthright was nothing but a double portion, but the text in Chronicles is express against our author's doctrine and shows that dominion was no part of the birthright; for it tells us that Joseph had the birthright but Judah the dominion. One would think our author were very fond of the very name of birthright, when he brings this instance of Jacob and Esau to prove that dominion belongs to the heir over his brethren.

116. First, because it will be but an ill example to prove that dominion by God's ordination belonged to the eldest son, because Jacob, the youngest, here had it, let him come by it how he would; for if it prove anything, it can only prove, against our author, that the

"assignment of dominion to the eldest is not by divine institution," which would then be unalterable. For, if by the law of God or nature absolute power and empire belongs to the eldest son and his heirs, so that they are supreme monarchs and all the rest of their brethren slaves, our author gives us reason to doubt whether the eldest son has a power to part with it to the prejudice of his posterity, since he tells us (*O. p.* 158), "That in grants and gifts that have their original from God or nature, no inferior power of man can limit, or make any law of prescription against them."

117. Secondly, because this place (*Gen. xxvii. 29*), brought by our author, concerns not at all the dominion of one brother over the other, nor the subjection of Esau to Jacob; for it is plain in history that Esau was never subject to Jacob but lived apart in Mount Seir, where he founded a distinct people and government and was himself prince over them, as much as Jacob was in his own family. The text, if considered, can never be understood of Esau himself or the personal dominion of Jacob over him; for the words "brethren" and "sons of thy mother" could not be used literally by Isaac, who knew Jacob had only one brother; and these words are so far from being true in a literal sense, or establishing any dominion in Jacob over Esau, that in the story we find the quite contrary, for (*Gen. xxxii.*) Jacob several times calls Esau "lord," and himself his servant; and (*Gen. xxxiii.*) "he bowed himself seven times to the ground to Esau." Whether Esau then were a subject and vassal — nay, as our author tells us, all subjects are slaves — to Jacob, and Jacob his sovereign prince by birthright, I leave the reader to judge and to believe, if he can, that these words of Isaac, "be lord over thy brethren, and let thy mother's sons bow down to thee," confirmed Jacob in a sovereignty over Esau upon the account of the birthright he had got from him.

118. He that reads the story of Jacob and Esau will find there never was any jurisdiction or authority that either of them had over the other after their father's death. They lived with the friendship and equality of brethren, neither lord, neither slave, to his brother, but independent of each other were both heads of their distinct families, where they received no laws from one another, but lived separately, and were the roots out of which sprang two distinct people under two distinct governments. This blessing then of Isaac whereon our author would build the dominion of the elder brother,

signifies no more but what Rebecca had been told from God (Gen. xxv. 23): "Two nations are in thy womb, and two manner of people shall be separated from thy bowels; and the one people shall be stronger than the other people, and the elder shall serve the younger." And so Jacob blessed Judah (Gen. xlix) and gave him the sceptre and dominion; from whence our author might have argued as well that jurisdiction and dominion belongs to the third son over his brethren, as well as from this blessing of Isaac that it belonged to Jacob; both these places contain only predictions of what should long after happen to their posterities, and not any declaration of the right of inheritance to dominion in either. And thus we have our author's two great and only arguments to prove that "heirs are lords over their brethren."

First, because God tells Cain (Gen. iv) that however sin might set upon him he ought or might be master of it; for the most learned interpreters understood the words of "sin," and not of "Abel," and give so strong reasons for it that nothing can convincingly be inferred from so doubtful a text to our author's purpose.

Secondly, because in this of Gen. xxvii, Isaac foretells that the Israelites, the posterity of Jacob, should have dominion over the Edomites, the posterity of Esau, therefore, says our author, "heirs are lords of their brethren." I leave any one to judge of the conclusion.

119. And now we see our author has provided for the descending and conveyance down of Adam's monarchical power or paternal dominion to posterity, by the inheritance of his heir, succeeding to all his father's authority, and becoming upon his death as much lord as his father was, "not only over his own children, but over his brethren," and all descended from his father, and so *in infinitum*. But yet who this heir is he does not once tell us, and all the light we have from him in this so fundamental a point is only that in his instance of Jacob, by using the word "birthright" as that which passed from Esau to Jacob, he leaves us to guess that by heir he means the eldest son; though I do not remember he anywhere mentions expressly the title of the first-born, but all along keeps himself under the shelter of the indefinite term "heir." But taking it to be his meaning that the eldest son is heir — for if the eldest be not, there will be no pretence why the sons should not be all heirs alike — and so by right of primogeniture has dominion over his brethren; this is but one step towards the settlement of succession, and the difficulties remain

still as much as ever till he can show us who is meant by right heir, in all those cases which may happen where the present possessor hath no son. This he silently passes over, and perhaps wisely, too; for what can be wiser, after one has affirmed that "the person having that power, as well as the power and form of government, is the ordinance of God, and by divine institution"⁴ (*O.* p. 254), than to be careful not to start any question concerning the person, the resolution whereof will certainly lead him into a confession that God and nature hath determined nothing about him? And if our author cannot show who, by right of nature or a clear positive law of God, has the next right to inherit the dominion of this natural monarch he has been at such pains about, when he died without a son, he might have spared his pains in all the rest; it being more necessary for the settling men's consciences and determining their subjection and allegiance to show them who, by original right, superior and antecedent to the will or any act of men, hath a title to this paternal jurisdiction, than it is to show that by nature there was such a jurisdiction; it being to no purpose for me to know there is such a paternal power which I ought and am disposed to obey, unless, where there are many pretenders, I also know the person that is rightfully invested and endowed with it.

120. For the main matter in question being concerning the duty of my obedience, and the obligation of conscience I am under to pay it to him that is of right my lord and ruler, I must know the person that this right of paternal power resides in, and so impowers him to claim obedience from me. For let it be true what he says, "That civil power not only in general is by divine institution, but even the assignment of it specially to the eldest parents";⁵ and "That not only the power or right of government, but the form of the power of governing, and the person having that power, are all the ordinance of God" (*O.* p. 254); yet, unless he show us in all cases who is this person ordained by God, who is this eldest parent, all his abstract notions of monarchical power will signify just nothing when they are to be reduced to practice, and men are conscientiously to pay their obedience. For paternal jurisdiction being not the thing to be obeyed, because it cannot command, but is only that which gives one man a right which another hath not, and if it come by inheritance, another man cannot have, to command and be obeyed, it is ridiculous to say,

⁴ [*P.* p. 255]

⁵ [*P.* p. 255]

I pay obedience to the paternal power when I obey him to whom paternal power gives no right to my obedience; for he can have no divine right to my obedience who cannot show his divine right to the power of ruling over me, as well as that by divine right there is such a power in the world.

121. And hence not being able to make out any prince's title to government, as heir to Adam, which, therefore, is of no use and had been better let alone, he is fain to resolve all into present possession, and makes civil obedience as due to an usurper as to a lawful king, and thereby the usurper's title as good. His words are — and they deserve to be remembered: "If an usurper dispossess the true heir, the subjects' obedience to the fatherly power must go along and wait upon God's providence" (*O.* p. 253). But I shall leave his title of usurpers to be examined in its due place, and desire my sober reader to consider what thanks princes owe such politics as this which can suppose paternal power — *i. e.*, a right to government — in the hands of a Cade⁶ or a Cromwell; and so all obedience being due to paternal power, the obedience of subjects will be due to them by the same right, and upon as good grounds, as it is to lawful princes; and yet this, as dangerous a doctrine as it is, must necessarily follow from making all political power to be nothing else but Adam's paternal power by right and divine institution, descending from him without being able to show to whom it descended or who is heir to it.

122. To settle government in the world and to lay obligations to obedience on any man's conscience, it is as necessary — supposing with our author that all power be nothing but the being possessed of Adam's fatherhood — to satisfy him who has a right to this power, this fatherhood, when the possessor dies without sons to succeed immediately to it, as it was to tell him that upon the death of the father the eldest son had a right to it; for it is still to be remembered that the great question is — and that which our author would be thought to contend for, if he did not sometimes forget it — what persons have a right to be obeyed, and not whether there be a power in the world which is to be called "paternal," without knowing in whom it resides; for so it be a power, *i. e.*, right to govern, it matters

⁶ [Died 1450; was a captain from Kent who led a rising of protest based on economic grievances and popular discontent. The uprising was ruthlessly suppressed, but created fear of popular tumult which lasted at least until Shakespeare's time.]

not whether it be termed "paternal" or "legal," "natural" or "acquired"; whether you call it "supreme fatherhood" or "supreme brotherhood" will be all one, provided we know who has it.

123 I go on then to ask whether in the inheriting of this paternal power, this supreme fatherhood, the grandson by a daughter hath a right before a nephew by a brother? Whether the grandson by the eldest son, being an infant, before the younger son, a man and able? Whether the daughter before the uncle? Or any other man, descended by a male line? Whether a grandson by a younger daughter, before a grand-daughter by an elder daughter? Whether the elder son by a concubine, before a younger son by a wife? From whence also will arise many questions of legitimation; and what in nature is the difference betwixt a wife and a concubine? For as to the municipal or positive laws of men, they can signify nothing here. It may further be asked whether the eldest son, being a fool, shall inherit this paternal power before the younger, a wise man, and what degree of folly it must be that shall exclude him? And who shall be judge of it? Whether the son of a fool, excluded for his folly, before the son of his wise brother who reigned? Who has the paternal power whilst the widow queen is with child by the deceased king, and nobody knows whether it will be a son or a daughter? Which shall be heir of the two male twins who, by the dissection of the mother, were laid open to the world? Whether a sister by the half-blood before a brother's daughter by the whole blood?⁷

124. These, and many more such doubts, might be proposed about the titles of succession and the right of inheritance; and that not as idle speculations, but such as in history we shall find have concerned the inheritance of crowns and kingdoms; and if ours want them, we need not go farther for famous examples of it than the other kingdom in this very island, which having been fully related by the ingenious and learned author of *Patriarcha non Monarcha*,⁸ I need say no more

⁷ [Locke, while denying that positive law provides an appropriate answer to the questions he raises, actually raises questions which arise either from positive law or from the established customs of particular societies.]

⁸ [*Patriarcha non monarcha, or the Patriarch unmonarched*, was the work of Philalethes (1681). Philalethes was James Tyrrell (1642-1718), an historian and political pamphleteer, and a close friend of Locke's. Apart from histories of England, he wrote a work on natural law refuting Hobbes, as well as some fourteen political dialogues which developed the Whig theory of the constitution. These were collected in 1718 under the title, *Bibliotheca Politica*.]

of. Till our author hath resolved all the doubts that may arise about the next heir and shown that they are plainly determined by the law of nature or the revealed law of God, all his suppositions of a monarchical, absolute, supreme, paternal power in Adam, and the descent of that power to his heirs, would not be of the least use to establish the authority or make out the title of any one prince now on earth, but would rather unsettle and bring all into question. For let our author tell us as long as he pleases, and let all men believe it, too, that Adam had a paternal and thereby a monarchical power; that this, the only power in the world, descended to his heirs; and that there is no other power in the world but this — let this be all as clear demonstration as it is manifest error, yet if it be not past doubt to whom this paternal power descends and whose now it is, nobody can be under any obligation of obedience, unless any one will say that I am bound to pay obedience to paternal power in a man who has no more paternal power than I myself; which is all one as to say, I obey a man because he has a right to govern; and if I be asked how I know he has a right to govern, I should answer it cannot be known that he has any at all; for that cannot be the reason of my obedience which I know not to be so, much less can that be a reason of my obedience which nobody at all can know to be so.

125. And therefore all this ado about Adam's fatherhood, the greatness of its power, and the necessity of its supposal, helps nothing to establish the power of those that govern, or to determine the obedience of subjects who are to obey, if they cannot tell whom they are to obey, or it cannot be known who are to govern, and who to obey. In the state the world is now, it is irrecoverably ignorant who is Adam's heir. This fatherhood, this monarchical power of Adam, descending to his heirs, would be of no more use to the government of mankind than it would be to the quieting of men's consciences or securing their healths, if our author had assured them that Adam had a power to forgive sins or cure diseases, which by divine institution descended to his heir, whilst this heir is impossible to be known. And should not he do as rationally who, upon this assurance of our author, went and confessed his sins and expected a good absolution; or took physic with expectation of health from any one who had taken on himself the name of priest or physician, or thrust himself into those employments, saying I acquiesce in the absolving power descending

from Adam, or I shall be cured by the medicinal power descending from Adam; as he who says I submit to and obey the paternal power descending from Adam, when it is confessed all these powers descend only to his single heir, and that heir is unknown?

126. It is true, the civil lawyers have pretended to determine some of these cases concerning the succession of princes; but by our author's principles they have meddled in a matter that belongs not to them. For if all political power be derived only from Adam, and be to descend only to his successive heirs by the ordinance of God and divine institution, this is a right antecedent and paramount to all government; and, therefore, the *positive* laws of men cannot determine that which is itself the foundation of all law and government and is to receive its rule only from the law of God and nature. And that being silent in the case, I am apt to think there is no such right to be conveyed this way; I am sure it would be to no purpose if there were, and men would be more at a loss concerning government and obedience to governors than if there were no such right, since by positive laws and compact, which divine institution — if there be any — shuts out, all these endless inextricable doubts can be safely provided against; but it can never be understood how a divine natural right, and that of such moment as is all order and peace in the world, should be conveyed down to posterity without any plain natural or divine rule concerning it. And there would be an end of all civil government if the assignment of civil power were by divine institution to the heir, and yet by that divine institution the person of the heir could not be known. This paternal regal power being by divine right only his, it leaves no room for human prudence or consent to place it anywhere else; for if only one man hath a divine right to the obedience of mankind, nobody can claim that obedience but he that can show that right, nor can men's consciences by any other pretence be obliged to it. And thus this doctrine cuts up all government by the roots.

127. Thus we see how our author, laying it for a sure foundation that the very person that is to rule is the ordinance of God and by divine institution, tells us at large only that this person is the heir, but who this heir is he leaves us to guess; and so this divine institution which assigns it to a person whom we have no rule to know is just as good as an assignment to nobody at all. But whatever our author

does, divine institution makes no such ridiculous assignments; nor can God be supposed to make it a sacred law that one certain person should have a right to something, and yet not give rules to mark out and know that person by; or give an heir a divine right to power, and yet not point out who that heir is. It is rather to be thought that an heir had no such right by divine institution than that God should give such a right to the heir but yet leave it doubtful and undeterminable who such heir is.

128. If God had given the land of Canaan to Abraham, and in general terms to somebody after him, without naming his seed whereby it might be known who that somebody was, it would have been as good and useful an assignment to determine the right to the land of Canaan as it would be the determining the right of crowns to give empire to Adam and his successive heirs after him without telling who his heir is; for the word "heir," without a rule to know who it is, signifies no more than somebody I know not whom. God, making it a divine institution that men should not marry those who were of near kin, thinks it not enough to say, "none of you shall approach to any that is near of kin to him, to uncover their nakedness"; but, moreover, gives rules to know who are those "near of kin," forbidden by divine institution, or else that law would have been of no use; it being to no purpose to lay restraint or give privileges to men in such general terms as the particular person concerned cannot be known by. But God not having anywhere said the next heir shall inherit all his father's estate or dominion, we are not to wonder that He hath nowhere appointed who that heir should be; for never having intended any such thing, never designed any heir in that sense, we cannot expect He should anywhere nominate or appoint any person to it, as we might, had it been otherwise. And therefore in Scripture, though the word "heir" occur, yet there is no such thing as "heir" in our author's sense — one that was by right of nature to inherit all that his father had, exclusive of his brethren. Hence Sarah supposes that, if Ishmael stayed in the house to share in Abraham's estate after his death, this son of a bondwoman might be heir with Isaac; and, therefore, says she, "cast out this bondwoman and her son, for the son of this bondwoman shall not be heir with my son"; but this cannot excuse our author who, telling us there is in every number of men one who is right and next heir to Adam, ought to have told us what

the laws of descent are; but he, having been so sparing to instruct us by rules how to know who is heir, let us see in the next place what his history out of Scripture, on which he pretends wholly to build his government, gives us in this necessary and fundamental point.

129. Our author, to make good the title of his book, begins his history of the descent of Adam's regal power in these words: "This lordship which Adam by command had over the whole world, and by right descending from him the patriarchs did enjoy, was a large, etc."⁹ How does he prove that the patriarchs by descent did enjoy it? For "dominion of life and death," says he, "we find Judah, the father, pronounced sentence of death against Thamar his daughter-in-law for playing the harlot."¹⁰ How does this prove that Judah had absolute and sovereign authority? "He pronounced sentence of death." The pronouncing of sentence of death is not a certain mark of sovereignty, but usually the office of inferior magistrates. The power of making laws of life and death is indeed a mark of sovereignty, but pronouncing the sentence according to those laws may be done by others, and, therefore, this will but ill prove that he had sovereign authority — as if one should say, "Judge Jefferies¹¹ pronounced sentence of death in the late times, therefore Judge Jefferies had sovereign authority." But it will be said, "Judah did it not by commission from another, and therefore did it in his own right." Who knows whether he had any right at all? Heat of passion might carry him to do that which he had no authority to do. "Judah had dominion of life and death": how does that appear? He exercised it, he "pronounced sentence of death against Thamar"; our author thinks it is very good proof that because he did it, therefore he had a right to do it. He lay with her also — by the same way of proof he had a right to do that too. If the consequence be good from doing to a right of doing, Absalom, too, may be reckonéd amongst our author's

⁹ [P. p. 255]

¹⁰ [P. p. 255]

¹¹ [George Jeffreys, First Baron Jeffreys (1648–1689), Lord Chancellor. After an early legal career, he became a judge, and was celebrated for a series of treason trials arising out of the supposed Popish plot of Titus Oates, and from the Rye House Conspiracy. Among those he sentenced to death was the celebrated Republican writer, Algernon Sydney. Later he conducted the infamous Bloody Assizes which arose out of the Duke of Monmouth's insurrection. His severity, combined with accusations of unfairness, gave him the reputation of lacking judicial characteristics, and of being a prosecutor on the bench who ignored the rights of the accused.]

sovereigns, for he pronounced such a sentence of death against his brother Amnon, and much upon a like occasion, and had it executed, too — if that be sufficient to prove a dominion of life and death.

But allowing this all to be clear demonstration of sovereign power, who was it that had this "lordship by right descending to him from Adam, as large and ample as the absolutest dominion of any monarch"? "Judah," says our author — Judah, a younger son of Jacob, his father and elder brethren living; so that if our author's own proof be to be taken, a younger brother may, in the life of his father and elder brothers, "by right of descent, enjoy Adam's monarchical power"; and if one so qualified may be a monarch by descent, why may not every man? If Judah, his father and elder brother living, were one of Adam's heirs, I know not who can be excluded from this inheritance; all men by inheritance may be monarchs as well as Judah.

130. "Touching war, we see that Abraham commanded an army of 318 soldiers of his own family, and Esau met his brother Jacob with 400 men at arms; for matter of peace, Abraham made a league with Abimelech, etc."¹² Is it not possible for a man to have three hundred and eighteen men in his family without being heir to Adam? A planter in the West Indies has more and might, if he pleased — who doubts? — muster them up and lead them out against the Indians to seek reparation upon any injury received from them; and all this without the "absolute dominion of a monarch descending to him from Adam." Would it not be an admirable argument to prove that all power by God's institution descended from Adam by inheritance, and that the very person and power of this planter were the ordinance of God because he had power in his family over servants born in his house and bought with his money? For this was just Abraham's case: those who were rich in the patriarch's days, as in the West Indies now, bought men and maid servants and, by their increase, as well as purchasing of new, came to have large and numerous families, which, though they made use of in war or peace, can it be thought the power they had over them was an inheritance descended from Adam when it was the purchase of their money? A man's riding in an expedition against an enemy, his horse bought in a fair, would be as good a proof that the owner "enjoyed the lordship which Adam by command had over the whole world by right descending to him," as Abraham's

¹² [P. p. 255]

leading out the servants of his family is that the patriarchs enjoyed this lordship by descent from Adam; since the title to the power the master had in both cases, whether over slaves or horses, was only from his purchase; and the getting a dominion over anything by bargain and money is a new way of proving one had it by descent and inheritance.

131. "But making war and peace are marks of sovereignty." Let it be so in politic societies. May not, therefore, a man in the West Indies, who hath with him sons of his own, friends, or companions, soldiers under pay, or slaves bought with money, or perhaps a band made up of all these, make war and peace, if there should be occasion, and "ratify the articles, too, with an oath," without being a sovereign, an absolute king over those who went with him? He that says he cannot must then allow many masters of ships, many private planters, to be absolute monarchs, for as much as this they have done. War and peace cannot be made for politic societies but by the supreme power of such societies; because, war and peace giving a different motion to the force of such a politic body, none can make war or peace but that which has the direction of the force of the whole body, and that in politic societies is only the supreme power.¹³ In voluntary societies, for the time, he that has such a power by consent may make war and peace, and so may a single man for himself, the state of war not consisting in the number of partisans but the enmity of the parties, where they have no superior to appeal to.

132. The actual making of war or peace is no proof of any other power, but only of disposing those to exercise or cease acts of enmity for whom he makes it; and this power in many cases anyone may have without any politic supremacy; and therefore the making of war or peace will not prove that every one that does so is a politic ruler, much less a king; for then commonwealths must be kings too, for they

¹³ [The doctrine of sovereignty here accepted by Locke was developed as part of a theory of international law by Grotius, precisely to avoid wars arising from private conflicts, which had been so characteristic of feudalism. Indeed, the making of the absolutist monarchical state, which overcame localism, also systematized the relations between peoples. While Locke is an advocate of the constitutionalizing of the public authority of government and while he is the strong defender of individual rights, he does not deny the final authority of the state in international affairs. Indeed in Book II he creates a special power, the federative, to deal with them.]

do as certainly make war and peace as monarchical government.

133. But granting this a "mark of sovereignty in Abraham," is it a proof of the descent to him of Adam's sovereignty over the whole world? If it be, it will surely be as good a proof of the descent of Adam's lordship to others too. And then commonwealths, as well as Abraham, will be heirs of Adam, for they make war and peace as well as he. If you say that the "lordship of Adam" doth not by right descend to commonwealths, though they make war and peace, the same say I of Abraham, and then there is an end of your argument. If you stand to your argument and say those that do make war and peace, as commonwealths do without doubt, "do inherit Adam's lordship," there is an end of your monarchy, unless you will say that commonwealths "by descent enjoying Adam's lordship" are monarchies, and that indeed would be a new way of making all the governments in the world monarchical.

134. To give our author the honour of this new invention, for I confess it is not I have first found it out by tracing his principles and so charged it on him, it is fit my readers know that — as absurd as it may seem — he teaches it himself, p. 23, where he ingenuously says:

In all kingdoms and commonwealths in the world, whether the prince be the supreme father of the people, or but the true heir to such a father, or come to the crown by usurpation or election, or whether some few or a multitude govern the commonwealth, yet still the authority that is in any one, or in many, or in all these, is the only right and natural authority of a supreme father.¹⁴

Which right of fatherhood, he often tells us, is "regal and royal authority"; as particularly p. 12,¹⁵ the page immediately preceding this instance of Abraham. This regal authority, he says, those that govern commonwealths have; and if it be true that regal and royal authority be in those that govern commonwealths, it is as true that commonwealths are governed by kings; for, if regal authority be in him that governs, he that governs must needs be a king, and so all commonwealths are nothing but downright monarchies; and then what need any more ado about the matter? The governments of the world are as they should be; there is nothing but monarchy in it. This,

¹⁴ [P. p. 259]

¹⁵ [P. p. 257]

without doubt, was the surest way our author could have found to turn all other governments but monarchical out of the world.

135 But all this scarce proves Abraham to have been a king as heir to Adam. If by inheritance he had been king, Lot, who was of the same family, must needs have been his subject by that title before the servants in his family, but we see they lived as friends and equals, and when their herdsmen could not agree, there was no pretence of jurisdiction or superiority between them, but they parted by consent (Gen. xiii), hence he is called, both by Abraham and by the text, Abraham's brother, the name of friendship and equality, and not of jurisdiction and authority, though he were really but his nephew. And if our author knows that Abraham was Adam's heir and a king, it was more, it seems, than Abraham himself knew, or his servant whom he sent a-wooing for his son; for when he sets out the advantages of the match (Gen. xxiv. 35), thereby to prevail with the young woman and her friends, he says:

I am Abraham's servant, and the Lord hath blessed my master greatly, and he is become great, and he hath given him flocks and herds, and silver and gold, and menservants and maidservants, and camels and asses; and Sarah, my master's wife, bare a son to my master when she was old, and unto him hath he given all he hath.

Can one think that a discreet servant, that was thus particular to set out his master's greatness, would have omitted the crown Isaac was to have, if he had known of any such? Can it be imagined he should have neglected to have told them on such an occasion as this that Abraham was a king, a name well known at that time for he had nine of them his neighbours, if he or his master had thought any such thing, the likeliest matter of all the rest to make his errand successful?

136. But this discovery it seems was reserved for our author to make two or three thousand years after, and let him enjoy the credit of it; only he should have taken care that some of Adam's land should have descended to this his heir, as well as all Adam's lordship; for though this lordship which Abraham — if we may believe our author — as well as the other patriarchs "by right descending to him, did enjoy, was as large and ample as the absolute dominion of any monarch which hath been since the creation," yet his estate, his territories, his dominions, were very narrow and scanty; for he had not the possession

of a foot of land till he bought a field and a cave of the sons of Heth to bury Sarah in.

137. The instance of Esau, joined with this of Abraham to prove that the "lordship which Adam had over the whole world, by right descending from him, the patriarchs did enjoy," is yet more pleasant than the former. "Esau met his brother Jacob with "four hundred men at arms"; he, therefore, was a king by right of heir to Adam. Four hundred armed men, then, however got together, are enough to prove him that leads them to be a king and Adam's heir. There have been Tories¹⁶ in Ireland — whatever there are in other countries — who would have thanked our author for so honourable an opinion of them, especially if there had been nobody near with a better title of five hundred armed men to question their royal authority of four hundred. It is a shame for men to trifle so, to say no worse of it, in so serious an argument. Here Esau is brought as a proof that Adam's lordship — Adam's absolute dominion, as large as that of any monarch — "descended by right to the patriarchs," and in this very chapter¹⁷ Jacob is brought as an instance of one that by "birthright was lord over his brethren." So we have here two brothers absolute monarchs by the same title, and at the same time heirs to Adam; the eldest, heir to Adam because he met his brother with four hundred men; and the youngest, heir to Adam by birthright.

Esau enjoyed the lordship which Adam had over the whole world by right descending to him, in as large and ample manner as the absolutest dominion of any monarch; and, at the same time, Jacob lord over him by the right heirs have to be lords over their brethren.

Risum teneatis? I never, I confess, met with any man of parts so dextrous as Sir Robert at this way of arguing; but it was his misfortune to light upon an hypothesis that could not be accommodated to the nature of things and human affairs. His principles could not be made to agree with that constitution and order which God had settled in the world, and therefore must needs often clash with common sense and experience.

¹⁶ [The precise reference is obscure. The word "Tory" was, however, first applied in Ireland to a group of Papist outlaws of the post-Cromwellian period.]

¹⁷ [P. p. 258]

138. In the next section he tells us: "This patriarchal power continued not only till the Flood, but after it, as the name 'patriarch' doth in part prove." The word "patriarch" doth more than in part prove that patriarchal power continued in the world as long as there were patriarchs; for it is necessary that patriarchal power should be whilst there are patriarchs, as it is necessary there should be paternal or conjugal power whilst there are fathers or husbands; but this is but playing with names. That which he would fallaciously insinuate is the thing in question to be proved, viz., that the "lordship which Adam had over the world — the supposed absolute universal dominion of Adam by right descending from him — the patriarchs did enjoy." If he affirms such an absolute monarchy continued to the Flood in the world, I would be glad to know what records he has it from; for I confess I cannot find a word of it in my Bible. If by patriarchal power he means anything else, it is nothing to the matter in hand. And how the name "patriarch" in some part proves that those who are called by that name had absolute monarchical power, I confess I do not see, and, therefore, I think needs no answer till the argument from it be made out a little clearer.

139. "The three sons of Noah had the world," says our author, "divided amongst them by their father, for of them was the whole world overspread."¹⁸ The world might be overspread by the offspring of Noah's sons, though he never divided the world amongst them; for the earth might be replenished without being divided; so that all our author's argument here proves no such division. However, I allow it to him and then ask, the world being divided amongst them, which of the three was Adam's heir? If Adam's lordship, Adam's monarchy, by right descended only to the eldest, then the other two could be but his subjects, his slaves; if by right it descended to all three brothers, by the same right it will descend to all mankind; and then it will be impossible what he says, that "heirs are lords of their brethren,"¹⁹ should be true; but all brothers and, consequently, all men will be equal and independent, all heirs to Adam's monarchy, and, consequently, all monarchs too, one as much as another. But it will be said, "Noah, their father divided the world amongst them"; so that our author will allow more to Noah than he will to God Almighty, for (*O. p. 211*) he thought it hard that God himself should give the

¹⁸ [*P. p. 256*]¹⁹ [*P. p. 258*]

world to Noah and his sons to the prejudice of Noah's birthright. His words are:

Noah was left sole heir to the world. Why should it be thought that God would disinherit him of his birthright and make him, of all men in the world, the only tenant in common with his children?

And yet he here thinks it fit that Noah should disinherit Shem of his birthright, and divide the world betwixt him and his brethren. So that this birthright, when our author pleases, must and, when he pleases, must not be sacred and inviolable.

140. If Noah did divide the world between his sons, and his assignment of dominions to them were good, there is an end of divine institution; all our author's discourse of Adam's heir, with whatsoever he builds on it, is quite out of doors: the natural power of kings falls to the ground; and then the form of the power governing, and the person having that power, will not be, as he says they are (*O. p.* 254) "the ordinance of God," but they will be "ordinances of man." For if the right of the heir be the ordinance of God, a divine right, no man, father or not father, can alter it; if it be not a divine right, it is only human, depending on the will of man; and so where human institution gives it not, the first-born has no right at all above his brethren, and men may put government into what hands and under what form they please.²⁰

141. He goes on: "Most of the civilest nations of the earth labour to fetch their original from some of the sons or nephews of Noah."²¹

²⁰ [The insistence that forms of government were man-made rather than given by God was fundamental to Locke's position. Only when the supernatural origin of government had been undermined was it possible to raise the purely ethical question of government, or to discuss what government was best from the point of view of earthly welfare. It may, incidentally, be noted that, while the Catholic Church held that government among men was of divine institution, it left the form of government within broad limits to human choice. While there is a doctrine of divine right developed by various Catholic philosophers, the divine right doctrine is dominantly Protestant; moreover, Puritanism which had combatted divine right, had insisted that the right form of government and indeed a complete code of law, had been prescribed by God. The Civil War in England had indeed developed in its course certain democratic and leveling doctrines. Nevertheless, Locke, for the rest the opponent of Thomas Hobbes, the author of *Leviathan*, shares honors with him as resting government on purely secular grounds. Historically, this was one of his chief contributions to political science.]

²¹ [*P. p.* 256]

How many do most of the civilest nations amount to, and who are they? I fear the Chinese, a very great and civil people, as well as several other people of the East, West, North, and South, trouble not themselves much about this matter. All that believe the Bible — which I believe are our author's "most of the civilest nations" — must necessarily derive themselves from Noah, but for the rest of the world, they think little of his sons or nephews. But if the heralds and antiquaries of all nations, for it is these men generally that labour to find out the originals of nations, or all the nations themselves "should labour to fetch their original from some of the sons or nephews of Noah," what would this be to prove that the "lordship which Adam had over the whole world by a right descended to the patriarchs"? Who ever, nations or races of men, "labour to fetch their original from," may be concluded to be thought by them men of renown, famous to posterity for the greatness of their virtues and actions; but beyond these they look not, nor consider who they were heirs to, but look on them as such as raised themselves by their own virtue to a degree that would give lustre to those who in future ages could pretend to derive themselves from them. But if it were Ogyges, Hercules, Brama, Tamerlain, Pharamond, nay, if Jupiter and Saturn²² were the names from whence divers races of men, both ancient and modern, have laboured to derive their original, will that prove that those men "enjoyed the lordship of Adam by right descending to them"? If not, this is but a flourish of our author's to mislead his reader, that in itself signifies nothing.

142. To as much purpose is what he tells us concerning this division of the world:

²² [Ogyges was, according to mythology, the first king of Thebes Hercules was the son of Alcmena, the wife of Amphitryon of Tyre, and Zeus, Lord of the Argolid, he was a legendary figure, treated sometimes as hero, sometimes as god Brahma was a priest in Rig-Veda mythology, the one moving force behind and above the gods, and so the Supreme God Tamberlain, a Scythian shepherd, was known as the "Scourge of the Gods" and was a figure in a play of Christopher Marlowe where he symbolized the lust for power Pharamond, legendary king of France, noted in the Arthurian cycle of romance, is said to have been the first king of France. His reign has been placed between 420-428. Jupiter was the chief Roman God, the equivalent of the Greek Zeus, and the special protector of the Roman race Saturn was the Roman God of sowing]

That some say it was by lot, and others that Noah sailed round the Mediterranean in ten years, and divided the world into Asia, Afric, and Europe, portions for his three sons.²³

America then, it seems, was left to be his that could catch it. Why our author takes such pains to prove the division of the world by Noah to his sons and will not leave out an imagination, though no better than a dream, that he can find anywhere to favour it, is hard to guess, since such a division, if it prove anything, must necessarily take away the title of Adam's heir, unless three brothers can altogether be heirs of Adam; and therefore the following words:

Howsoever the manner of this division be uncertain, yet it is most certain the division was by families from Noah and his children, over which the parents were heads and princes.²⁴

If allowed him to be true and of any force to prove that all the power in the world is nothing but the lordship of Adam's descending by right, they will only prove that the fathers of the children are all heirs to this lordship of Adam; for if in those days Cham and Japhet, and other parents besides the eldest son, were heads and princes over their families and had a right to divide the earth by families, what hinders younger brothers, being fathers of families, from having the same right? If Cham and Japhet were princes by right descending to them notwithstanding any title of heir in their eldest brother, younger brothers by the same right descending to them are princes now; and so all our author's natural power of kings will reach no farther than their own children, and no kingdom, by this natural right, can be bigger than a family; for either this lordship of Adam over the whole world by right descends only to the eldest son, and then there can be but one heir, as our author says,²⁵ or else it by right descends to all the sons equally, and then every father of a family will have it, as well as the three sons of Noah. Take which you will, it destroys the present governments and kingdoms that are now in the world; since whoever has this natural power of a king, by right descending to him, must have it either as our author tells us Cain had it and be lord over his brethren and so be alone king of the whole world, or else, as he tells us here, Shem, Cham, and Japhet had it — three brothers — and so be only prince of his own family, and all families independent one

²³ [P. p. 256]

²⁴ [P. p. 256]

²⁵ [P. p. 258]

of another. All the world must be only one empire by the right of the next heir, or else every family be a distinct government of itself, by the "lordship of Adam's descending to parents of families." And to this only tend all the proofs he here gives us of the descent of Adam's lordship, for, continuing his story of this descent, he says:

143. "In the dispersion of Babel, we must certainly find the establishment of royal power throughout the kingdoms of the world." ²⁶ If you must find it, pray do, and you will help us to a new piece of history; but you must show it us before we shall be bound to believe that regal power was established in the world upon your principles; for that regal power was established "in the kingdoms of the world" I think nobody will dispute, but that there should be kingdoms in the world whose several kings enjoyed their crowns "by right descending to them from Adam," that we think not only apocryphal, but also utterly impossible. If our author has no better foundation for his monarchy than a supposition of what was done at the dispersion of Babel, the monarchy he erects thereon, whose top is to reach to heaven to unite mankind, will serve only to divide and scatter them as that tower did, and, instead of establishing civil government and order in the world, will produce nothing but confusion.

144. For he tells us the nations they were divided into —

were distinct families, which had fathers for rulers over them; whereby it appears that even in the confusion God was careful to preserve the fatherly authority by distributing the diversity of languages according to the diversity of families.²⁷

It would have been a hard matter for any one but our author to have found out so plainly, in the text he here brings, that all the nations in that dispersion were governed by fathers and that "God was careful to preserve the fatherly authority." The words of the text are: "These are the sons of Shem after their families, after their tongues in their lands, after their nations"; and the same thing is said of Cham and Japhet, after an enumeration of their posterities; in all which there is not one word said of their governors or forms of government — of fathers or fatherly authority. But our author, who is very quick-sighted to spy out "fatherhood" where nobody else could see any the least glimpses of it, tells us positively their "rulers

²⁶ [P. p. 256]

²⁷ [P. p. 256]

were fathers," and "God was careful to preserve the fatherly authority." And why? Because those of the same family spoke the same language, and so, of necessity, in the division kept together. Just as if one should argue thus: Hannibal in his army, consisting of divers nations, kept those of the same language together; therefore fathers were captains of each band, and Hannibal was careful of the "fatherly authority." Or in peopling of Carolina, the English, French, Scotch, and Welsh that are there, plant themselves together, and by them the country is divided "in their lands after their tongues, after their families, after their nations"; therefore care was taken of the "fatherly authority." Or because in many parts of America every little tribe was a distinct people with a different language, one should infer that therefore "God was careful to preserve the fatherly authority," or that therefore their rulers "enjoyed Adam's lordship by right descending to them," though we know not who were their governors, nor what their form of government, but only that they were divided into little independent societies, speaking different languages.

145. The Scripture says not a word of their rulers or forms of government, but only gives an account how mankind came to be divided into distinct languages and nations; and therefore it is not to argue from the authority of Scripture to tell us positively fathers were their rulers when the Scripture says no such thing, but to set up fancies in one's own brain when we confidently aver matter of fact where records are utterly silent. Upon a like ground, *i.e.*, none at all, he says, "That they were not confused multitudes without heads and governors and at liberty to choose what governors or governments they pleased."

146. For, I demand, when mankind were all yet of one language, all congregated in the plain of Shinar, were they then all under one monarch "who enjoyed the lordship of Adam by right descending to him"? If they were not, there were then no thoughts, it is plain, of Adam's heir, no right to government known then upon that title, no care taken, by God or man, of Adam's fatherly authority. If, when mankind were but one people, dwelt altogether, and were of one language, and were upon building a city together, and when it is plain they could not but know the right heir — for Shem lived till Isaac's time, a long while after the division at Babel — if then, I say, they were not under the monarchical government of Adam's fatherhood by

right descending to the heir, it is plain there was no regard had to the fatherhood, no monarchy acknowledged due to Adam's heir, no empire of Shem's in Asia, and consequently no such division of the world by Noah as our author has talked of. As far as we can conclude anything from Scripture in this matter, it seems from this place that if they had any government, it was rather a commonwealth than an absolute monarchy; for the Scripture tells us (Gen. xi), "They said" — it was not a prince commanded the building of this city and tower, it was not by the command of one monarch, but by the consultation of many, a free people — "let us build us a city." They built it for themselves as free men, not as slaves for their lord and master: "that we be not scattered abroad," having a city once built and fixed habitations to settle our abodes and families. This was the consultation and design of a people that were at liberty to part asunder but desired to keep in one body, and could not have been either necessary or likely in men tied together under the government of one monarch, who, if they had been, as our author tells us, all slaves under the absolute dominion of a monarch, needed not have taken such care to hinder themselves from wandering out of the reach of his dominion. I demand whether this be not plainer in Scripture than anything of "Adam's heir" or "fatherly authority"?

147. But if being, as God says (Gen. xi. 6), one people, they had one ruler, one king by natural right, absolute and supreme over them, "what care had God to preserve the paternal authority of the supreme fatherhood," if on a sudden he suffer seventy-two — for so many our author talks of — distinct nations to be erected out of it, under distinct governors, and at once to withdraw themselves from the obedience of their sovereign? This is to entitle God's care how and to what we please. Can it be sense to say that God was careful to preserve the fatherly authority in those who had it not? For, if these were subjects under a supreme prince, what authority had they? Was it an instance of God's care to preserve the fatherly authority when he took away the true supreme fatherhood of the natural monarch? Can it be reason to say that God, for the preservation of fatherly authority, lets several new governments with their governors start up who could not all have fatherly authority? And is it not as much reason to say that God is careful to destroy fatherly authority when he suffers one who is in possession of it to have his government

torn in pieces and shared by several of his subjects? Would it not be an argument just like this, for monarchical government, to say, when any monarchy was shattered to pieces and divided amongst revolted subjects, that God was careful to preserve monarchical power by rending a settled empire into a multitude of little governments? If anyone will say that what happens in providence to be preserved, God is careful to preserve as a thing therefore to be esteemed by men as necessary or useful — it is a peculiar propriety of speech, which everyone will not think fit to imitate. But this I am sure is impossible to be either proper or true speaking, that Shem, for example — for he was then alive — should have fatherly authority, or sovereignty by right of fatherhood over that one people at Babel, and that the next moment, Shem yet living, seventy-two others should have fatherly authority or sovereignty by right of fatherhood over the same people divided into so many distinct governments. Either these seventy-two fathers actually were rulers just before the confusion, and then they were not one people, but that God himself says they were, or else they were a commonwealth, and then where was monarchy? Or else these seventy-two fathers had fatherly authority but knew it not. Strange, that fatherly authority should be the only original of government amongst men, and yet all mankind not know it! And stranger yet, that the confusion of tongues should reveal it to them all of a sudden that in an instant these seventy-two should know that they had fatherly power, and all others know that they were to obey it in them, and every one know that particular fatherly authority to which he was a subject. He that can think this arguing from Scripture may from thence make out what model of an Eutopia²⁸ will best suit with his fancy or interest; and this fatherhood, thus disposed of, will justify both a prince who claims an universal monarchy and his subjects who, being fathers of families, shall quit all subjection to him and canton his empire into less governments for themselves; for it will always remain a doubt in which of these the fatherly authority resided, till our author resolves us whether Shem, who was then alive, or these seventy-two new princes, beginning so many new

²⁸ [Utopia was the title used by Sir Thomas More in 1516 as the name for a distant island in which he set his ideal commonwealth. Since then the word Utopia has been used to describe a literary genre which deals with ideal and fictional commonwealths.]

empires in his dominions and over his subjects, had right to govern, since our author tells us that both one and the other had fatherly, which is supreme, authority, and are brought in by him as instances of those who did "enjoy the lordships of Adam by right descending to them, which was as large and ample as the absolute dominion of any monarch." This at least is unavoidable, that "if God was careful to preserve the fatherly authority in the seventy-two new-erected nations," it necessarily follows that He was as careful to destroy all pretences of Adam's heir, since he took care, and therefore did preserve the fatherly authority in so many — at least seventy-one — that it could not possibly be Adam's heirs, when the right heir — if God had ever ordained any such inheritance — could not but be known: *Shem* then living, and they being all one people.

148. Nimrod is his next instance of enjoying this patriarchal power,²⁹ but I know not for what reason our author seems a little unkind to him and says that he "against right enlarged his empire by seizing violently on the rights of other lords of families." These lords of families here were called fathers of families in his account of the dispersion at Babel; but it matters not how they were called, so we know who they are; for this fatherly authority must be in them, either as heirs to Adam — and so there could not be seventy-two, nor above one at once — or else as natural parents over their children, and so every father will have paternal authority over his children by the same right and in as large extent as those seventy-two had, and so be independent princes over their own offspring. Taking his lords of families in this latter sense — as it is hard to give those words any other sense in this place — he gives us a very pretty account of the origin of monarchy in these following words: "And in this sense he may be said to be the author and founder of monarchy,"³⁰ viz., as against right seizing violently on the rights of fathers over their children, which paternal authority, if it be in them, by right of nature — for else how could those seventy-two come by it — nobody can take from them without their own consents; and then I desire our author and his friends to consider how far this will concern other princes, and whether it will not, according to his conclusion of that paragraph, resolve all regal power of those whose dominions extend beyond their families either into tyranny and usurpation, or election

²⁹ [P. p. 256]³⁰ [P. p. 257]

and consent of fathers of families, which will differ very little from consent of the people.

149. All his instances, in the next section,³¹ of the twelve dukes of Edom, the nine kings in a little corner of Asia in Abraham's days, the thirty-one kings of Canaan destroyed by Joshua, and the care he takes to prove that these were all sovereign princes, and that every town in those days had a king, are so many direct proofs against him that it was not the lordship of Adam by right descending to them that made kings; for if they had held their royalties by that title, either there must have been but one sovereign over them all, or else every father of a family had been as good a prince and had as good a claim to royalty as these. For, if all the sons of Esau had each of them, the younger as well as the eldest, the right of fatherhood, and so were sovereign princes after their father's death, the same right had their sons after them, and so on to all posterity; which will limit all the natural power of fatherhood only to be over the issue of their own bodies and their descendants; which power of fatherhood dies with the head of each family, and makes way for the like power of fatherhood to take place in each of his sons over their respective posterities, whereby the power of fatherhood will be preserved, indeed, and is intelligible, but will not be at all to our author's purpose. None of the instances he brings are proofs of any power they had as heirs of Adam's paternal authority by the title of his fatherhood descending to them, no, nor of any power they had by virtue of their own; for Adam's fatherhood being over all mankind, it could descend to but one at once and from him to his right heir only, and so there could by that title be but one king in the world at a time; and, by right of fatherhood not descending from Adam, it must be only as they themselves were fathers, and so could be over none but their own posterity. So that, if those twelve dukes of Edom, if Abraham and the nine kings his neighbours, if Jacob and Esau and the thirty-one kings in Canaan, the seventy-two kings mutilated by Adonibeseck, the thirty-two kings that came to Benhadad, the seventy kings of Greece making war at Troy, were, as our author contends, all of them sovereign princes, it is evident that kings derived their power from some other original than fatherhood, since some of these had power over more than their own posterity; and it is demonstration they could not be

³¹ [P. p. 257]

all heirs to Adam. For I challenge any man to make any pretence to power by right of fatherhood either intelligible or possible in any one otherwise than either as Adam's heir or as progenitor over his own descendants naturally sprung from him. And if our author could show that any one of these princes, of which he gives us here so large a catalogue, had his authority by either of these titles, I think I might yield him the cause, though it is manifest they are all impertinent and directly contrary to what he brings them to prove, viz., "That the lordship which Adam had over the world by right descended to the patriarchs."

150. Having told us that "the patriarchal government continued in Abraham, Isaac, and Jacob, until the Egyptian bondage," ²² he tells us:

By manifest footsteps we may trace this paternal government unto the Israelites coming into Egypt, where the exercise of the supreme patriarchal government was intermitted because they were in subjection to a stronger prince ²³

What these footsteps are of paternal government, in our authors' sense, *i.e.*, of absolute monarchical power descending from Adam and exercised by right of fatherhood, we have seen: that is, for 2290 years no footsteps at all, since in all that time he cannot produce any one example of any person who claimed or exercised regal authority by right of fatherhood, or show any one who being a king was Adam's heir. All that his proofs amount to is only this: that there were fathers, patriarchs, and kings in that age of the world; but that the fathers and patriarchs had any absolute arbitrary power, or by what titles those kings had theirs, and of what extent it was, the Scripture is wholly silent. It is manifest by "right of fatherhood" they neither did nor could claim any title to dominion or empire.

151. To say that the "exercise of supreme patriarchal government was intermitted because they were in subjection to a stronger prince," proves nothing but what I before suspected, viz., that "patriarchal jurisdiction or government" is a fallacious expression, and does not in our author signify — what he would yet insinuate by it — paternal and regal power, such an absolute sovereignty as he supposes was in Adam.

152. For how can he say that patriarchal jurisdiction was intermitted in Egypt, where there was a king under whose regal government

²² [P. p. 257]

²³ [P. p. 257]

the Israelites were, if "patriarchal" were "absolute" monarchical jurisdiction? And if it were not, but something else, why does he make such ado about a power not in question and nothing to the purpose? The exercise of patriarchal jurisdiction, if patriarchal be regal, was not intermitted whilst the Israelites were in Egypt. It is true the exercise of regal power was not then in the hands of any of the promised seeds of Abraham, nor before neither that I know; but what is that to the intermission of regal authority as descending from Adam, unless our author will have it that this chosen line of Abraham had the right of inheritance to Adam's lordship? And then to what purpose are his instances of the seventy-two rulers in whom the fatherly authority was preserved in the confusion at Babel? Why does he bring the twelve princes, sons of Ishmael, and the dukes of Edom, and join them with Abraham, Isaac, and Jacob as examples of the exercise of true patriarchal government, if the exercise of patriarchal jurisdiction were intermitted in the world whenever the heirs of Jacob had not supreme power? I fear supreme patriarchal jurisdiction was not only intermitted but, from the time of the Egyptian bondage, quite lost in the world; since it will be hard to find, from that time downwards, any one who exercised it as an inheritance descending to him from the patriarchs Abraham, Isaac, and Jacob. I imagined monarchical government would have served his turn in the hands of Pharaoh or anybody. But one cannot easily discover in all places what his discourse tends to, as particularly in this place it is not obvious to guess what he drives at when he says, "the exercise of supreme patriarchal jurisdiction in Egypt;" or how this serves to make out the descent of Adam's lordship to the patriarchs or anybody else.

153. For I thought he had been giving us out of Scripture proofs and examples of monarchical government founded on paternal authority descending from Adam, and not a history of the Jews, amongst whom yet we find no kings till many years after they were a people, and, when kings were their rulers, there is not the least mention or room for a pretence that they were heirs to Adam or kings by paternal authority. I expected, talking so much as he does of Scripture, that he would have produced thence a series of monarchs whose titles were clear to Adam's fatherhood and who, as heirs to him, owned and exercised paternal jurisdiction over their subjects, and that this was

the true patriarchal government; whereas he neither proves that the patriarchs were kings, nor that either kings or patriarchs were heirs to Adam, or so much as pretended to it; and one may as well prove that the patriarchs were all absolute monarchs, that the power both of patriarchs and kings was only paternal, and that this power descended to them from Adam. I say all these propositions may be as well proved by a confused account of a multitude of little kings in the West Indies, out of Ferdinando Soto,³⁴ or any of our late histories of the Northern America, or by our author's seventy kings of Greece, out of Homer, as by anything he brings out of Scripture in that multitude of kings he had reckoned up.

154. And methinks he should have let Homer and his wars of Troy alone, since his great zeal to truth or monarchy carried him to such a pitch of transport against philosophers and poets that he tells us in his preface that "there are too many in these days who please themselves in running after the opinions of philosophers and poets to find out such an original of government as might promise them some title to liberty, to the great scandal of Christianity and bringing in of atheism." And yet these heathens, philosopher Aristotle and poet Homer, are not rejected by our zealous Christian politician whenever they offer anything that seems to serve his turn, whether "to the great scandal of Christianity and bringing in of atheism" let him look. This I cannot but observe, in authors who, it is visible, write not for truth, how ready zeal for interest and party is to entitle Christianity to their designs, and to charge atheism on those who will not without examining submit to their doctrines and blindly swallow their nonsense.

But to return to his Scripture history, our author further tells us that "after the return of the Israelites out of bondage, God, out of a special care of them, chose Moses and Joshua successively to govern as princes in the place and stead of the supreme fathers."³⁵ If it be true that they returned out of bondage, it must be in a state of freedom and must imply that both before and after this bondage they were free, unless our author will say that changing of masters is returning out of bondage, or that a slave returns out of bondage when he is

³⁴ [Ferdinand de Soto (1496?–1542), a Spanish explorer who took part in the second Darien expedition, explored the coast of Guatemala and Yucatan, reinforced Pizarro in Peru. He died searching for gold in the southern part of Peru.]

³⁵ [P. p. 258]

removed from one galley to another. If, then, they returned out of bondage, it is plain that in those days, whatever our author in his preface says to the contrary, there was a difference between a son, a subject, and a slave; and that neither the patriarchs before, nor their rulers after, this "Egyptian bondage, numbered their sons or subjects amongst their possessions," and disposed of them with as absolute a dominion as they did their other goods.

155. This is evident in Jacob, to whom Reuben offered his two sons as pledges, and Judah was at last surety for Benjamin's safe return out of Egypt, which all had been vain, superfluous, and but a sort of mockery, if Jacob had had the same power over every one of his family as he had over his ox or his ass, as an owner over his substance, and the offers that Reuben or Judah made had been such a security for returning of Benjamin, as if a man should take two lambs out of his lord's flock and offer one as security that he will safely restore the other.

156. When they were out of this bondage, what then? "God, out of a special care of them, the Israelites . . ." It is well that once in his book he will allow God to have any care of the people; for in other places he speaks of mankind as if God had no care of any part of them but only of their monarchs, and that the rest of the people, the societies of men, were made as so many herds of cattle, only for the service, use, and pleasure of their princes.

157. "Chose Moses and Joshua successively to govern as princes" — a shrewd argument our author has found out to prove God's care of the "fatherly authority" and "Adam's heirs," that here, as an expression of His care of His own people, He chooses those for princes over them that had not the least pretence to either. The persons chosen were Moses of the tribe of Levi and Joshua of the tribe of Ephraim, neither of which had any title of fatherhood. But, says our author, they were in the place and stead of the supreme fathers. If God had anywhere as plainly declared his choice of such fathers to be rulers as He did of Moses and Joshua, we might believe Moses and Joshua were in their place and stead; but that being the question in debate till that be better proved, Moses being chosen by God to be ruler of his people will no more prove that government belonged to Adam's heir, or to the fatherhood, than God's choosing Aaron of the tribe of Levi to be priest will prove that the priesthood belonged to Adam's

heir of the prime fathers; since God would choose Aaron to be priest, and Moses ruler in Israel, though neither of those offices were settled on Adam's heir or the fatherhood.

158. Our author goes on: "And after them likewise for a time He raised up judges to defend His people in time of peril." ³⁶ This proves fatherly authority to be the original of government, and that it descended from Adam to his heirs, just as well as what went before; only here our author seems to confess that these judges, who were all the governors they then had, were only men of valour whom they made their generals to defend them in time of peril; and cannot God raise up such men, unless fatherhood have a title to government?

159. But, says our author, "when God gave the Israelites kings, he re-established the ancient and prime right of lineal succession to paternal government." ³⁷

160. How did God re-establish it? By a law, a positive command? We find no such thing. Our author means, then, that when God gave them a king, in giving them a king, he re-established the right, etc. To re-establish *de facto* the right of lineal succession to paternal government is to put a man in possession of that government which his fathers did enjoy, and he by lineal succession had a right to; for, first, if it were another government than what his ancestor had, it was not succeeding to an ancient right but beginning a new one; for, if a prince should give a man, besides his ancient patrimony which for some ages his family had been disseized of, an additional estate never before in the possession of his ancestors, he could not be said to re-establish the right of lineal succession to any more than what had been formerly enjoyed by his ancestors. If, therefore, the power the kings of Israel had were anything more than Isaac or Jacob had, it was not the re-establishing in them the right of succession to a power, but giving them a new power, however you please to call it, paternal or not; and whether Isaac and Jacob had the same power that the kings of Israel had, I desire anyone, by what has been above said, to consider, and I do not think he will find that either Abraham, Isaac, or Jacob had any regal power at all.

161. Next, there can be no "re-establishment of the prime and ancient right of lineal succession" to anything, unless he that is put in possession of it has the right to succeed and to be the true and

³⁶ [P. p. 258]

³⁷ [P. p. 258]

next heir to him he succeeds to. Can that be a "re-establishment" which begins in a new family, or that the "re-establishment of an ancient right of lineal succession" when a crown is given to one who has no right of succession to it and who, if the lineal succession had gone on, had been out of all possibility of pretence to it? Saul, the first king God gave the Israelites, was of the tribe of Benjamin. Was the "ancient and prime right of lineal succession re-established" in him? The next was David, the youngest son of Jesse, of the posterity of Judah, Jacob's third son. Was the "ancient and prime right of lineal succession to paternal government re-established" in him? Or in Solomon, his younger son and successor in the throne? Or in Jeroboam over the ten tribes? Or in Athaliah, a woman who reigned six years — an utter stranger to the royal blood? If "the ancient and prime right of lineal succession to paternal government were re-established" in any of these or their posterity, "the ancient and prime right of lineal succession to paternal government" belongs to younger brothers as well as elder, and may be re-established in any man living; for whatever younger brothers "by ancient and prime right of lineal succession" may have as well as the elder, that every man living may have a right to by "lineal succession," and Sir Robert as well as any other. And so what a brave right of lineal succession to his paternal or regal government our author has re-established for the securing the rights and inheritance of crowns, where everyone may have it, let the world consider.

162. But says our author, however, "Whensoever God made choice of any special person to be king, he intended that the issue also should have benefit thereof, as being comprehended sufficiently in the person of the father, although the father was only named in the grant."³⁸ This yet will not help out succession; for if, as our author says, the benefit of the grant be intended to the issue of the grantee, this will not direct the succession; since, if God give anything to a man and his issue in general, the claim cannot be to any one of that issue in particular; every one that is of his race will have an equal right. If it be said our author meant "heir," I believe our author was as willing as anybody to have used that word if it would have served his turn; but Solomon, who succeeded David in the throne, being no more his heir than Jeroboam, who succeeded him in the government of the ten

³⁸ [P. p. 258]

tribes, was his issue, our author had reason to avoid saying that God intended it to the "heirs," when that would not hold in a succession which our author could not except against; and so he has left his succession as undetermined as if he had said nothing about it; for if the regal power be given by God to a man and his issue, as the land of Canaan was to Abraham and his seed, must they not all have a title to it, all share in it? And one may as well say that by God's grant to Abraham and his seed the land of Canaan was to belong only to one of his seed exclusive of all others, as by God's grant of dominion to a man and his issue this dominion was to belong in peculiar to one of his issue exclusive of all others.

163. But how will our author prove that whensoever God made choice of any special person to be a king, he intended that "the — I suppose he means his — issue also should have benefit thereof?" Has he so soon forgotten Moses and Joshua, whom in this very section he says, "God out of a special care chose to govern as princes," and the "Judges" that God raised up? Had not these princes, having the authority of the supreme fatherhood, the same power that the kings had, and, being specially chosen by God himself, should not their issue have the benefit of that choice as well as David's or Solomon's? If these had the paternal authority put into their hands immediately by God, why had not their issue the benefit of this grant in a succession to this power? Or if they had it as Adam's heirs, why did not their heirs enjoy it after them by right descending to them? For they could not be heirs to one another. Was the power the same and from the same original in Moses, Joshua, and the Judges as it was in David and the Kings, and was it inheritable in one and not in the other? If it was not paternal authority, then God's own people were governed by those that had not paternal authority, and those governors did well enough without it; if it were paternal authority, and God chose the persons that were to exercise it, our author's rule fails, that "whensoever God makes choice of any person to be supreme ruler" — for I suppose the name "king" has no spell in it, it is not the title, but the power makes the difference — "He intends that the issue also should have the benefit of it," since from their coming out of Egypt to David's time — four hundred years — the issue was never "so sufficiently comprehended in the person of the father" as that any son, after the death of his father, succeeded to the government amongst

all those judges that judged Israel. If, to avoid this, it be said God always chose the person of the successor, and so, transferring the fatherly authority to him, excluded his issue from succeeding to it, that is manifestly not so in the story of Jephthah, where he artiled with the people, and they made him judge over them, as is plain (Judg. xi).

164. It is in vain then to say that "whensoever God chooses any special person to have the exercise of paternal authority" — for if that be not to be king I desire to know the difference between a king and one having the exercise of paternal authority — "He intends the issue also should have the benefit of it," since we find the authority the judges had ended with them and descended not to their issue; and if the judges had not paternal authority, I fear it will trouble our author or any of the friends to his principles to tell who had then the paternal authority — that is, the government and supreme power amongst the Israelites. And I suspect they must confess that the chosen people of God continued a people several hundreds of years without any knowledge or thought of this paternal authority or any appearance of monarchical government at all.

165. To be satisfied of this, he need but read the story of the Levite, and the war thereupon with the Benjamites, in the three last chapters of Judges; and when he finds that the Levite appeals to the people for justice, that it was the tribes and the congregation that debated, resolved, and directed all that was done on that occasion, he must conclude either that God was not "careful to preserve the fatherly authority" amongst his own chosen people, or else that the fatherly authority may be preserved where there is no monarchical government. If the latter, then it will follow that though fatherly authority be ever so well proved, yet it will not infer a necessity of monarchical government; if the former, it will seem very strange and improbable that God should ordain fatherly authority to be so sacred amongst the sons of men that there could be no power or government without it, and yet that amongst his own people, even whilst He is providing a government for them and therein prescribes rules to the several states and relations of men, this great and fundamental one, this most material and necessary of all the rest, should be concealed and lie neglected for four hundred years after.

166. Before I leave this, I must ask how our author knows that

"whensoever God makes choice of any special person to be king, he intends that the issue should have the benefit thereof"? Does God by the law of nature or revelation say so? By the same law also He must say which of his issue must enjoy the crown in succession, and so point out the heir, or else leave his issue to divide or scramble for the government — both alike absurd, and such as will destroy the benefit of such grant to the issue. When any such declaration of God's intention is produced, it will be our duty to believe God intends it so; but till that be done, our author must show us some better warrant before we shall be obliged to receive him as the authentic revealer of God's intentions.

167. "The issue," says our author, "is comprehended sufficiently in the person of the father, although the father only was named in the grant." And yet God, when he gave the land of Canaan to Abraham (Gen. xiii. 15), thought fit to put "his seed" into the grant too: so the priesthood was given to Aaron and his seed, and the crown God gave not only to David, but his seed also. And however our author assures us that "God intends that the issue should have the benefit of it when He chooses any person to be king," yet we see that the kingdom which He gave to Saul, without mentioning his seed after him, never came to any of his issue. And why, when God chose a person to be king, He should intend that his issue should have the benefit of it more than when he chose one to be judge in Israel, I would fain know a reason; or why does a grant of fatherly authority to a king more comprehend the issue than when a like grant is made to a judge? Is paternal authority by right to descend to the issue of one, and not of the other? There will need some reason to be shown of this difference more than the name, when the thing given is the same fatherly authority, and the manner of giving it — God's choice of the person — the same too; for I suppose our author, when he says, "God raised up judges," will by no means allow they were chosen by the people.

168. But since our author has so confidently assured us of the care of God to preserve the fatherhood, and pretends to build all he says upon the authority of the Scripture, we may well expect that that people whose law, constitution, and history are chiefly contained in the Scripture should furnish him with the clearest instances of God's care of preserving the fatherly authority, in that people who, it is agreed, He had a most peculiar care of. Let us see, then, what state

this paternal authority or government was in amongst the Jews, from their beginning to be a people. It was omitted, by our author's confession, from their coming into Egypt till their return out of that bondage — above two hundred years; from thence till God gave the Israelites a king — about four hundred years more — our author gives but a very slender account of it; nor, indeed, all that time are there the least footsteps of paternal or regal government amongst them. But then, says our author, "God re-established the ancient and prime right of lineal succession to paternal government."

169. What a "lineal succession to paternal government" was then established, we have already seen. I only now consider how long this lasted, and that was to their captivity — about five hundred years; from thence to their destruction by the Romans — above six hundred and fifty years after — the "ancient and prime right of lineal succession to paternal government" was again lost, and they continued a people in the promised land without it. So that of one thousand seven hundred and fifty years that they were God's peculiar people, they had hereditary kingly government amongst them not one third of the time; and of that time there is not the least footstep of one moment of "paternal government," nor the "re-establishment of the ancient and prime right of lineal succession to it," whether we suppose it to be derived, as from its fountain, from David, Saul, Abraham, or, which upon our author's principles is the only true, from Adam.

THE SECOND TREATISE
OF CIVIL GOVERNMENT

*An Essay Concerning the True Original, Extent,
and End of Civil Government*

CHAPTER I

1. IT HAVING been shown in the foregoing discourse:

(1) That Adam had not, either by natural right of fatherhood or by positive donation from God, any such authority over his children or dominion over the world as is pretended.

(2) That if he had, his heirs yet had no right to it.

(3) That if his heirs had, there being no law of nature nor positive law of God that determines which is the right heir in all cases that may arise, the right of succession, and consequently of bearing rule, could not have been certainly determined.

(4) That if even that had been determined, yet the knowledge of which is the eldest line of Adam's posterity being so long since utterly lost, that in the races of mankind and families of the world there remains not to one above another the least pretence to be the eldest house, and to have the right of inheritance.

All these premises having, as I think, been clearly made out, it is impossible that the rulers now on earth should make any benefit or derive any the least shadow of authority from that which is held to be the fountain of all power: Adam's private dominion and paternal jurisdiction; so that he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder and mischief, tumult, sedition, and rebellion — things that the followers of that hypothesis so loudly cry out against — must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it than what Sir Robert Filmer hath taught us.

2. To this purpose, I think it may not be amiss to set down what I take to be political power, that the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servants, a husband over his wife, and a lord over his slave. All which distinct powers happening sometimes together in the same man; if he be considered under these different relations, it may help us to distinguish these powers one from another, and show

the difference betwixt a ruler of a commonwealth, a father of a family, and a captain of a galley.

3. Political power, then, I take to be a right of making laws with penalties of death and, consequently, all less penalties for the regulating and preserving of property, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the public good.

CHAPTER II

OF THE STATE OF NATURE

4. To UNDERSTAND political power right, and derive it from its original, we must consider what state all men are naturally in, and that is a state of perfect freedom to order their actions and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties, should also be equal one amongst another without subordination or subjection; unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty.

5. This equality of men by nature the judicious Hooker¹ looks

¹ ["The judicious Hooker" (1554-1600) was the celebrated English ecclesiastic who defended the Reformation settlements and wrote the famous *Lawes of Ecclesiasticall Politie*, of which Books I to V appeared from 1594 to 1597, and Books VI to VIII were published posthumously in 1648. While defending the monarchy, he rested it on a doctrine of social contract. He was a precursor of Locke in that, while living in a monarchical government, he was not a defender of divine right, and took, on the whole, a constitutional position. Celebrated for moderation and balance, Richard Hooker possessed some of the same virtues possessed by Locke himself.]

upon as so evident in itself and beyond all question that he makes it the foundation of that obligation to mutual love amongst men on which he builds the duties we owe one another, and from whence he derives the great maxims of justice and charity. His words are:

The like natural inducement hath brought men to know that it is no less their duty to love others than themselves; for seeing those things which are equal must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature? To have anything offered them repugnant to this desire must needs in all respects grieve them as much as me; so that, if I do harm, I must look to suffer, there being no reason that others should show greater measure of love to me than they have by me showed unto them; my desire therefore to be loved of my equals in nature, as much as possibly may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn, for direction of life, no man is ignorant. (*Ecc. Pol.* lib. i.).

6. But though this be a state of liberty, yet it is not a state of licence; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it which obliges every one; and reason, which is that law, teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker — all the servants of one sovereign master, sent into the world by his order, and about his business — they are his property whose workmanship they are, made to last during his, not one another's, pleasure; and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorize us to destroy another, as if we were made for one another's uses as the inferior ranks of creatures are for ours. Every one, as he is bound to preserve himself and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought

he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of life: the liberty, health, limb, or goods of another.

7. And that all men may be restrained from invading others' rights and from doing hurt to one another, and the law of nature be observed which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands, whereby everyone has a right to punish the transgressors of that law to such a degree as may hinder its violation; for the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody that in the state of nature had a power to execute that law and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has done, every one may do so; for in that state of perfect equality where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

8. And thus in the state of nature one man comes by a power over another; but yet no absolute or arbitrary power to use a criminal, when he has got him in his hands, according to the passionate heats or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint; for these two are the only reasons why one man may lawfully do harm to another, which is that we call punishment. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men for their mutual security; and so he becomes dangerous to mankind, the tie which is to secure them from injury and violence being slighted and broken by him. Which being a trespass against the whole species and the peace and safety of it provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or, where it is necessary, destroy things noxious to them, and so may bring such evil on any one who hath transgressed that law, as may make him repent the doing of it and thereby deter him, and by his example others, from doing the like mischief. And in this case,

and upon this ground, *every man hath a right to punish the offender and be executioner of the law of nature.*

9. I doubt not but this will seem a very strange doctrine to some men; but before they condemn it, I desire them to resolve me by what right any prince or state can put to death or punish any alien for any crime he commits in their country. It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislative, reach not a stranger; they speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority, by which they are in force over the subjects of that commonwealth, hath no power over him. Those who have the supreme power of making laws in England, France, or Holland, are to an Indian but like the rest of the world, men without authority; and therefore, if by the law of nature every man hath not a power to punish offences against it as he soberly judges the case to require, I see not how the magistrates of any community can punish an alien of another country, since, in reference to him, they can have no more power than what every man naturally may have over another.²

10. Besides the crime which consists in violating the law and varying from the right rule of reason, whereby a man so far becomes degenerate and declares himself to quit the principles of human nature and to be a noxious creature, there is commonly injury done to some person or other, and some other man receives damage by his transgression; in which case he who hath received any damage has, besides the right of punishment common to him with other men, a particular right to seek reparation from him that has done it; and any other person, who finds it just, may also join with him that is injured and assist him in recovering from the offender so much as may make satisfaction for the harm he has suffered.

² [Locke's point here rests in fact on a somewhat shaky foundation, since authority could well be based on sovereignty over territory, and so over all those who found themselves within it, whether by birth, by immigration, or by temporary visit. Moreover, while it might lead back to a natural law of consent, the position could be argued that a stranger put himself under a country's laws by entering its domain. Locke here was actually assuming the duties of hospitality to, and respect for, the persons of strangers frequently found in early societies; or he was arguing the normal right of extraterritoriality. In some earlier civilizations, as indeed in Greece and Rome, foreigners were under the protection of some local and accepted resident of their country who had to guarantee their obedience to its laws, though they did not acquire personal rights thereunder.]

11. From these two distinct rights — the one of punishing the crime for restraint and preventing the like offence, which right of punishing is in everybody; the other of taking reparation, which belongs only to the injured party — comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That he who has suffered the damage has a right to demand in his own name, and he alone can remit; the damnified person has this power of appropriating to himself the goods or service of the offender by right of self-preservation, as every man has a power to punish the crime to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end; and thus it is that every man, in the state of nature, has a power to kill a murderer, both to deter others from doing the like injury, which no reparation can compensate, by the example of the punishment that attends it from everybody, and also to secure men from the attempts of a criminal who, having renounced reason — the common rule and measure God hath given to mankind — hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind; and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security. And upon this is grounded that great law of nature, “Whoso sheddeth man’s blood, by man shall his blood be shed.” And Cain was so fully convinced that every one had a right to destroy such a criminal that, after the murder of his brother, he cries out, “Every one that findeth me, shall slay me;” so plain was it writ in the hearts of mankind.

12. By the same reason may a man in the state of nature punish the lesser breaches of that law. It will perhaps be demanded: with death? I answer: Each transgression may be punished to that degree and with so much severity as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence that can be committed in the state of nature may in the state of nature be also punished equally, and as far forth as it may in a commonwealth; for though it would be beside my

present purpose to enter here into the particulars of the law of nature, or its measures of punishment, yet it is certain there is such a law, and that, too, as intelligible and plain to a rational creature and a studier of that law as the positive laws of commonwealths, nay, possibly plainer, as much as reason is easier to be understood than the fancies and intricate contrivances of men, following contrary and hidden interests put into words, for so truly are a great part of the municipal laws of countries, which are only so far right as they are founded on the law of nature, by which they are to be regulated and interpreted.

13. To this strange doctrine — viz., that in the state of nature every one has the executive power of the law of nature — I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends, and, on the other side, that ill-nature, passion, and revenge will carry them too far in punishing others, and hence nothing but confusion and disorder will follow; and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great where men may be judges in their own case; since it is easy to be imagined that he who was so unjust as to do his brother an injury will scarce be so just as to condemn himself for it; but I shall desire those who make this objection to remember that absolute monarchs are but men, and if government is to be the remedy of those evils which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man commanding a multitude has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or control those who execute his pleasure, and in whatsoever he doth, whether led by reason, mistake, or passion, must be submitted to? Much better it is in the state of nature, wherein men are not bound to submit to the unjust will of another; and if he that judges, judges amiss in his own or any other case, he is answerable for it to the rest of mankind.

14. It is often asked as a mighty objection, "Where are or ever

were there any men in such a state of nature?" To which it may suffice as an answer at present that, since all princes and rulers of independent governments all through the world are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. I have named all governors of independent communities, whether they are, or are not, in league with others; for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community and make one body politic; other promises and compacts men may make one with another and yet still be in the state of nature. The promises and bargains for truck, etc., between the two men in the desert island, mentioned by Garcilasso de la Vega, in his *History of Peru*,³ or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature in reference to one another; for truth and keeping of faith belongs to men as men, and not as members of society.

15. To those that say there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker, *Eccl. Pol.*, lib. i., sect. 10, where he says,

The laws which have been hitherto mentioned, (*i. e.*, the laws of nature) do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do; but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things needful for such a life as our nature doth desire, a life fit for the dignity of man; therefore to supply those defects and imperfections which are in us, as living singly and solely by ourselves, we are naturally induced to seek communion and fellowship with others. This was the cause of men's uniting themselves at first in politic societies.

But I, moreover, affirm that all men are naturally in that state and remain so till by their own consents they make themselves members of some politic society; and I doubt not in the sequel of this discourse to make it very clear.

³ [Garcilasso de la Vega (1535-1616), called *el Inca*, was a historian of Peru and the first South American in Spanish literature. His most famous books are: *La Florida del Inca* (1605) and his history of Peru, *Commentarios reales que tratan del origen de los Incas* (Lisbon, Part I, 1609; Part II, 1617).]

CHAPTER III

OF THE STATE OF WAR

16. THE STATE of war is a state of enmity and destruction; and, therefore, declaring by word or action, not a passionate and hasty, but a sedate, settled design upon another man's life, puts him in a state of war with him against whom he has declared such an intention, and so has exposed his life to the other's power to be 'taken away by him, or anyone that joins with him in his defence and espouses his quarrel; it being reasonable and just I should have a right to destroy that which threatens me with destruction; for, by the fundamental law of nature, man being to be preserved as much as possible when all cannot be preserved, the safety of the innocent is to be preferred; and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a wolf or a lion, because such men are not under the ties of the common law of reason, have no other rule but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures that will be sure to destroy him whenever he falls into their power.

17. And hence it is that he who attempts to get another man into his absolute power does thereby put himself into a state of war with him, it being to be understood as a declaration of a design upon his life; for I have reason to conclude that he who would get me into his power without my consent would use me as he pleased when he got me there, and destroy me, too, when he had a fancy to it; for nobody can desire to have me in his absolute power unless it be to compel me by force to that which is against the right of my freedom, *i. e.*, make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him as an enemy to my preservation who would take away that freedom which is the fence to it; so that he who makes an attempt to enslave me thereby puts himself into a state of war with me. He that, in the state of nature, would take away the freedom that belongs to any one in that state, must necessarily be supposed to have a design to take away everything else, that freedom being the foundation of all the rest; as he that,

in the state of society, would take away the freedom belonging to those of that society or commonwealth, must be supposed to design to take away from them everything else, and so be looked on as in a state of war.

18. This makes it lawful for a man to kill a thief who has not in the least hurt him, nor declared any design upon his life any farther than, by the use of force, so to get him in his power as to take away his money, or what he pleases, from him; because, using force where he has no right to get me into his power, let his pretence be what it will, I have no reason to suppose that he who would take away my liberty would not, when he had me in his power, take away everything else. And therefore it is lawful for me to treat him as one who has put himself into a state of war with me, *i. e.*, kill him if I can; for to that hazard does he justly expose himself whoever introduces a state of war and is aggressor in it.

19. And here we have the plain difference between the state of nature and the state of war which, however some men have confounded, are as far distant as a state of peace, good-will, mutual assistance, and preservation, and a state of enmity, malice, violence, and mutual destruction are one from another. Men living together according to reason, without a common superior on earth with authority to judge between them, is properly the state of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war; and it is the want of such an appeal gives a man the right of war even against an aggressor, though he be in society and a fellow-subject. Thus a thief, whom I cannot harm but by appeal to the law for having stolen all that I am worth, I may kill when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me my own defence and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. Want of a common judge with authority puts all men in a state of nature; force without right upon a man's person makes a state of war both where there is, and is not, a common judge.

20. But when the actual force is over, the state of war ceases

between those that are in society, and are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury and to prevent future harm. But where no such appeal is, as in the state of nature, for want of positive laws and judges with authority to appeal to, the state of war once begun continues with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future; nay, where an appeal to the law and constituted judges lies open, but the remedy is denied by a manifest perverting of justice and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men, there it is hard to imagine anything but a state of war, for wherever violence is used and injury done, though by hands appointed to administer justice, it is still violence and injury, however coloured with the name, pretences, or forms of law, the end whereof being to protect and redress the innocent by an unbiassed application of it to all who are under it, wherever that is not bona fide done, war is made upon the sufferers, who having no appeal on earth to right them, they are left to the only remedy in such cases — an appeal to heaven.

21. (To avoid this state of war — wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders — is one great reason of men's putting themselves into society and quitting the state of nature; for where there is an authority, a power on earth from which relief can be had by appeal, there the continuance of the state of war is excluded, and the controversy is decided by that power.) Had there been any such court, any superior jurisdiction on earth, to determine the right between Jephthah and the Ammonites, they had never come to a state of war; but we see he was forced to appeal to heaven: "The Lord the Judge," says he, "be judge this day between the children of Israel and the children of Ammon" (Judges xi. 27.), and then prosecuting and relying on his appeal, he leads out his army to battle. And, therefore, in such controversies where the question is put, "Who shall be judge?" it cannot be meant, "who shall decide the controversy"; every one knows what Jephthah here tells us, that "the Lord the Judge" shall judge. Where there is no judge on earth,

the appeal lies to God in heaven. That question then cannot mean: who shall judge whether another hath put himself in a state of war with me, and whether I may, as Jephthah did, appeal to heaven in it? Of that I myself can only be judge in my own conscience, as I will answer it at the great day to the supreme Judge of all men.

CHAPTER IV

OF SLAVERY

22. THE NATURAL liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative shall enact according to the trust put in it. Freedom then is not what Sir Robert Filmer tells us (*O. A.* 55.), "a liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws"; but freedom of men under government is to have a standing rule to live by, common to every one of that society and made by the legislative power erected in it, a liberty to follow my own will in all things where the rule prescribes not, and not to be subject to the Inconstant, uncertain, unknown, arbitrary will of another man; as freedom of nature is to be under no other restraint but the law of nature.

23. This freedom from absolute, arbitrary power is so necessary to and closely joined with a man's preservation that he cannot part with it but by what forfeits his preservation and life together; for a man not having the power of his own life cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute arbitrary power of another to take away his life when he pleases. Nobody can give more power than he has himself; and he that cannot take away his own life cannot give another power over it. Indeed, having by his fault forfeited his own life by some act that deserves death, he to whom he has forfeited it may, when he has him

in his power, delay to take it, and make use of him to his own service, and he does him no injury by it; for, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the will of his master, to draw on himself the death he desires.

24. This is the perfect condition of slavery, which is nothing else but "the state of war continued between a lawful conqueror and a captive"; for, if once compact enter between them and make an agreement for a limited power on the one side and obedience on the other, the state of war and slavery ceases as long as the compact endures; for, as has been said, no man can by agreement pass over to another that which he hath not in himself — a power over his own life.

I confess we find among the Jews, as well as other nations, that men did sell themselves; but it is plain this was only to drudgery, not to slavery; for it is evident the person sold was not under an absolute, arbitrary, despotical power; for the master could not have power to kill him at any time whom, at a certain time, he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life that he could not, at pleasure, so much as maim him, but the loss of an eye or tooth set him free (Exod. xxi).

CHAPTER V

OF PROPERTY

25. WHETHER we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence; or revelation, which gives us an account of those grants God made of the world to Adam, and to Noah and his sons; it is very clear that God, as King David says (Psal. cxv. 16), "has given the earth to the children of men," given it to mankind in common. But this being supposed, it seems to some a very great difficulty how any one should ever come to have a property in anything. I will not content myself to answer that if it be difficult to make out property upon a supposition that God gave the world to Adam and his posterity

in common, it is impossible that any man but one universal monarch should have any property upon a supposition that God gave the world to Adam and his heirs in succession, exclusive of all the rest of his posterity. But I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

26. God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life and convenience. The earth and all that is therein is given to men for the support and comfort of their being. And though all the fruits it naturally produces and beasts it feeds belong to mankind in common, as they are produced by the spontaneous hand of nature; and nobody has originally a private dominion exclusive of the rest of mankind in any of them, as they are thus in their natural state; yet, being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use or at all beneficial to any particular man. The fruit or venison which nourishes the wild Indian, who knows no enclosure and is still a tenant in common, must be his, and so his, *i. e.*, a part of him, that another can no longer have any right to it before it can do him any good for the support of his life.

27. Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others.

28. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, when did they begin to be his? when he digested?

or when he ate? or when he boiled? or when he brought them home? or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. That labour put a distinction between them and common, that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say he had no right to those acorns or apples he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common and removing it out of the state nature leaves it in which begins the property, without which the common is of no use. And the taking of this or that part does not depend on the express consent of all the commoners. Thus the glass my horse has bit, the turf my servant has cut, and the ore I have digged in any place where I have a right to them in common with others, become my property without the assignation or consent of anybody. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them.

29. By making 'an explicit consent of every commoner necessary to any one's appropriating to himself any part of what is given in common, children or servants could not cut the meat which their father or master had provided for them in common without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt but that in the pitcher is his only who drew it out? His labour hath taken it out of the hands of nature, where it was common and belonged equally to all her children, and hath thereby appropriated it to himself.

30. Thus this law of reason makes the deer that Indian's who hath killed it; it is allowed to be his goods who hath bestowed his labour upon it, though before it was the common right of every one. And amongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine property, this original law of nature, for the beginning of property in what was before common, still takes place; and by virtue thereof what fish any one catches in the ocean, that great and still remaining common of mankind, or what ambergris any one takes up here, is, by the labour

that removes it out of that common state nature left it in, made his property who takes that pains about it. And even amongst us, the hare that anyone is hunting is thought his who pursues her during the chase; for, being a beast that is still looked upon as *common* and no man's private possession, whoever has employed so much labour about any of that kind as to find and pursue her has thereby removed her from the state of nature wherein she was common, and hath begun a property.

31. It will perhaps be objected to this that "if gathering the acorns, or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will." To which I answer: not so. The same law of nature that does by this means give us property does also bound that property, too. "God has given us all things richly" (1 Tim. vi. 17), is the voice of reason confirmed by inspiration. But how far has he given it us? To enjoy. As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in; whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. And thus, considering the plenty of natural provisions there was a long time in the world, and the few spenders, and to how small a part of that provision the industry of one man could extend itself and engross it to the prejudice of others, especially keeping within the bounds set by reason of what might serve for his use, there could be then little room for quarrels or contentions about property so established.

32. But the chief matter of property being now not the fruits of the earth and the beasts that subsist on it, but the earth itself, as that which takes in and carries with it all the rest, I think it is plain that property in that, too, is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common. Nor will it invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow commoners — all mankind. God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, *i. e.*, improve it for the benefit of life, and therein lay out some-

thing upon it that was his own, his labour. He that in obedience to this command of God subdued, tilled, and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.

33. Nor was this appropriation of any parcel of land by improving it any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself; for he that leaves as much as another can make use of does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst; and the case of land and water, where there is enough for both, is perfectly the same.

34. God gave the world to men in common; but since he gave it them for their benefit and the greatest conveniences of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational — and labour was to be his title to it — not to the fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement as was already taken up needed not complain, ought not to meddle with what was already improved by another's labour; if he did, it is plain he desired the benefit of another's pains which he had no right to, and not the ground which God had given him in common with others to labour on, and whereof there was as good left as that already possessed, and more than he knew what to do with, or his industry could reach to.

35. It is true, in land that is common in England or any other country where there is plenty of people under government who have money and commerce, no one can enclose or appropriate any part without the consent of all his fellow-commoners; because this is left common by compact, *i. e.*, by the law of the land, which is not to be violated. And though it be common in respect of some men, it is not so to all mankind, but is the joint property of this country or this parish. Besides, the remainder after such enclosure would not be as good to the rest of the commoners as the whole was when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world it was quite otherwise.

The law man was under was rather for appropriating. God commanded, and his wants forced, him to labour. That was his property which could not be taken from him wherever he had fixed it. And hence subduing or cultivating the earth and having dominion, we see, are joined together. The one gave title to the other. So that God; by commanding to subdue, gave authority so far to appropriate and the condition of human life which requires labour and material, to work on necessarily introduces private possessions.

36. The measure of property nature has well set by the extent of men's labour and the conveniences of life. No man's labour could subdue or appropriate all, nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to entrench upon the right of another, or acquire to himself a property to the prejudice of his neighbour, who would still have room for as good and as large a possession — after the other had taken out his — as before it was appropriated. This measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself without injury to anybody in the first ages of the world, when men were more in danger to be lost by wandering from their company in the then vast wilderness of the earth than to be straitened for want of room to plant in. And the same measure may be allowed still without prejudice to anybody, as full as the world seems; for supposing a man or family in the state they were at first peopling of the world by the children of Adam or Noah, let him plant in some inland, vacant places of America, we shall find that the possessions he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of mankind, or give them reason to complain or think themselves injured by this man's encroachment, though the race of men have now spread themselves to all the corners of the world and do infinitely exceed the small number which was at the beginning. Nay, the extent of ground is of so little value without labour that I have heard it affirmed that in Spain itself a man may be permitted to plough, sow, and reap, without being disturbed, upon land he has no other title to but only his making use of it. But, on the contrary, the inhabitants think themselves beholden to him who by his industry on neglected and, consequently, waste land has increased the stock of corn which they wanted. But be this as it will, which I lay no stress on, this I dare

boldly affirm — that the same rule of propriety, viz, that every man should have as much as he could make use of, would hold still in the world without straitening anybody, since there is land enough in the world to suffice double the inhabitants, had not the invention of money and the tacit agreement of men to put a value on it introduced — by consent — larger possessions and a right to them; which, how it has done, I shall by-and-by show more at large.

37 This is certain, that in the beginning, before the desire of having more than man needed had altered the intrinsic value of things which depends only on their usefulness to the life of man, or had agreed that a little piece of yellow metal which would keep without wasting or decay should be worth a great piece of flesh or a whole heap of corn, though men had a right to appropriate, by their labour, each one to himself as much of the things of nature as he could use, yet this could not be much, nor to the prejudice of others, where the same plenty was still left to those who would use the same industry. To which let me add that he who appropriates land to himself by his labour does not lessen but increase the common stock of mankind; for the provisions serving to the support of human life produced by one acre of enclosed and cultivated land are — to speak much within compass — ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that encloses land, and has a greater plenty of the conveniences of life from ten acres than he could have from a hundred left to nature, may truly be said to give ninety acres to mankind; for his labour now supplies him with provisions out of ten acres which were by the product of a hundred lying in common. I have here rated the improved land very low in making its product but as ten to one, when it is much nearer a hundred to one; for I ask whether in the wild woods and uncultivated waste of America, left to nature, without any improvement, tillage, or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniences of life as ten acres equally fertile land do in Devonshire, where they are well cultivated.

Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed as many of the beasts as he could; he that so employed his pains about any of the spontaneous products of nature as any way to alter them from the state which nature put them in, by placing any of his labour on them, did thereby acquire a

propriety in them; but, if they perished in his possession without their due use, if the fruits rotted or the venison putrified, before he could spend it, he offended against the common law of nature, and was liable to be punished; he invaded his neighbor's share, for he had no right farther than his use called for any of them, and they might serve to afford him conveniences of life.

38. The same measures governed the possession of land, too: whatsoever he tilled and reaped, laid up and made use of before it spoiled, that was his peculiar right; whatsoever he enclosed and could feed and make use of, the cattle and product was also his. But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering and laying up, this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other. Thus, at the beginning, Cain might take as much ground as he could till and make it his own land, and yet leave enough to Abel's sheep to feed on; a few acres would serve for both their possessions. But as families increased and industry enlarged their stocks, their possessions enlarged with the need of them; but yet it was commonly without any fixed property in the ground they made use of till they incorporated, settled themselves together, and built cities; and then, by consent, they came in time to set out the bounds of their distinct territories, and agree on limits between them and their neighbours, and by laws within themselves settled the properties of those of the same society; for we see that in that part of the world which was first inhabited, and therefore like to be best peopled, even as low down as Abraham's time they wandered with their flocks and their herds, which was their substance, freely up and down; and this Abraham did in a country where he was a stranger. Whence it is plain that at least a great part of the land lay in common; that the inhabitants valued it not, nor claimed property in any more than they made use of. But when there was not room enough in the same place for their herds to feed together, they, by consent, as Abraham and Lot did (Gen. xiii. 5), separated and enlarged their pasture where it best liked them. And for the same reason Esau went from his father and his brother and planted in Mount Seir (Gen. xxxvi. 6).

39. And thus, without supposing any private dominion and property in Adam over all the world exclusive of all other men, which

can no way be proved, nor any one's property be made out from it; but supposing the world given, as it was, to the children of men in common, we see how labour could make men distinct titles to several parcels of it for their private uses, wherein there could be no doubt of right, no room for quarrel.

40. Nor is it so strange, as perhaps before consideration it may appear, that the property of labour should be able to overbalance the community of land; for it is labour indeed that put the difference of value on everything; and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it, and he will find that the improvement of labour makes the far greater part of the value. I think it will be but a very modest computation to say that, of the products of the earth useful to the life of man, nine-tenths are the effects of labour; nay, if we will rightly estimate things as they come to our use and cast up the several expenses about them, what in them is purely owing to nature, and what to labour, we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labour.

41. There cannot be a clearer demonstration of anything than several nations of the Americans are of this, who are rich in land and poor in all the comforts of life; whom nature having furnished as liberally as any other people with the materials of plenty, *i. e.*, a fruitful soil, apt to produce in abundance what might serve for food, raiment, and delight, yet for want of improving it by labour have not one-hundredth part of the conveniences we enjoy. And a king of a large and fruitful territory there feeds, lodges, and is clad worse than a day-labourer in England.

42. To make this a little clear, let us but trace some of the ordinary provisions of life through their several progresses before they come to our use and see how much of their value they receive from human industry. Bread, wine, and cloth are things of daily use and great plenty; yet, notwithstanding, acorns, water, and leaves, or skins must be our bread, drink, and clothing, did not labour furnish us with these more useful commodities; for whatever bread is more worth than acorns, wine than water, and cloth or silk than leaves, skins, or moss, that is wholly owing to labour and industry: the one of these being the food and raiment which unassisted nature furnishes

us with; the other, provisions which our industry and pains prepare for us, which how much they exceed the other in value when any one hath computed, he will then see how much labour makes the far greatest part of the value of things we enjoy in this world. And the ground which produces the materials is scarce to be reckoned in as any, or at most but a very small, part of it; so little that even amongst us land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, "waste"; and we shall find the benefit of it amount to little more than nothing.

This shows how much numbers of men are to be preferred to largeness of dominions; and that the increase of lands and the right of employing of them is the great art of government; and that prince who shall be so wise and godlike as by established laws of liberty to secure protection and encouragement to the honest industry of mankind, against the oppression of power and narrowness of party, will quickly be too hard for his neighbours; but this by the bye.

To return to the argument in hand.

43. An acre of land that bears here twenty bushels of wheat, and another in America which with the same husbandry would do the like, are, without doubt, of the same natural intrinsic value; but yet the benefit mankind receives from the one in a year is worth £5, and from the other possibly not worth a penny if all the profit an Indian received from it were to be valued and sold here; at least, I may truly say, not one-thousandth. It is labour, then, which puts the greatest part of the value upon land, without which it would scarcely be worth anything; it is to that we owe the greatest part of all its useful products; for all that the straw, bran, bread of that acre of wheat is more worth than the product of an acre of as good land which lies waste is all the effect of labour. For it is not barely the ploughman's pains, the reaper's and thresher's toil, and the baker's sweat is to be counted into the bread we eat; the labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are a vast number requisite to this corn, from its being seed to be sown to its being made bread, must all be charged on the account of labour, and received as an effect of that; nature and the earth furnished only the almost worthless materials as in themselves. It would be a strange "catalogue of things that industry

provided and made use of about every loaf of bread," before it came to our use, if we could trace them: iron, wood, leather, bark, timber, stone, bricks, coals, lime, cloth, dyeing, drugs, pitch, tar, masts, ropes, and all the materials made use of in the ship that brought any of the commodities used by any of the workmen to any part of the work; all which it would be almost impossible, at least too long, to reckon up.

44. From all which it is evident that, though the things of nature are given in common, yet man, by being master of himself and proprietor of his own person and the actions or labour of it, had still in himself the great foundation of property; and that which made up the greater part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, was perfectly his own and did not belong in common to others.

45. Thus labour, in the beginning, gave a right of property wherever anyone was pleased to employ it upon what was common, which remained a long while the far greater part and is yet more than mankind makes use of. Men, at first, for the most part contented themselves with what unassisted nature offered to their necessities; and though afterwards, in some parts of the world — where the increase of people and stock, with the use of money, had made land scarce and so of some value — the several communities settled the bounds of their distinct territories and, by laws within themselves, regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began. And the leagues that have been made between several states and kingdoms either expressly or tacitly disowning all claim and right to the land in the others' possession have, by common consent, given up their pretences to their natural common right which originally they had to those countries, and so have, by positive agreement, settled a property amongst themselves in distinct parts and parcels of the earth; yet there are still great tracts of ground to be found which — the inhabitants thereof not having joined with the rest of mankind in the consent of the use of their common money — lie waste, and are more than the people who dwell on it do or can make use of, and so still lie in common; though this can scarce happen amongst that part of mankind that have consented to the use of money.

46. The greatest part of things really useful to the life of man, and such as the necessity of subsisting made the first commoners of the world look after, as it doth the Americans now, are generally things of short duration, such as, if they are not consumed by use, will decay and perish of themselves; gold, silver, and diamonds are things that fancy or agreement hath put the value on, more than real use and the necessary support of life. Now of those good things which nature hath provided in common, every one had a right, as hath been said, to as much as he could use, and property in all that he could effect with his labour; all that his industry could extend to, to alter from the state nature had put it in, was his. He that gathered a hundred bushels of acorns or apples had thereby a property in them; they were his goods as soon as gathered. He was only to look that he used them before they spoiled, else he took more than his share and robbed others. And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of. If he gave away a part to anybody else so that it perished not uselessly in his possession, these he also made use of. And if he also bartered away plums that would have rotted in a week for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock, destroyed no part of the portion of the goods that belonged to others, so long as nothing perished uselessly in his hands. Again, if he would give his nuts for a piece of metal, pleased with its colour, or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others; he might heap as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it.

47. And thus came in the use of money — some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful but perishable supports of life.

48. And as different degrees of industry were apt to give men possessions in different proportions, so this invention of money gave them the opportunity to continue and enlarge them; for supposing an island, separate from all possible commerce with the rest of the world, wherein there were but a hundred families, but there were sheep, horses, and cows, with other useful animals, wholesome fruits, and

land enough for corn for a hundred thousand times as many, but nothing in the island, either because of its commonness or perishableness, fit to supply the place of money; what reason could any one have there to enlarge his possessions beyond the use of his family and a plentiful supply to its consumption, either in what their own industry produced or they could barter for like perishable, useful commodities with others? Where there is not something both lasting and scarce, and so valuable to be hoarded up, there men will not be apt to enlarge their possessions of land were it ever so rich, ever so free for them to take. For, I ask, what would a man value ten thousand or a hundred thousand acres of excellent land, ready cultivated and well stocked, too, with cattle, in the middle of the inland parts of America where he had no hopes of commerce with other parts of the world to draw money to him by the sale of the product? It would not be worth the enclosing, and we should see him give up again to the wild common of nature whatever was more than would supply the conveniences of life to be had there for him and his family.

49 Thus in the beginning all the world was America, and more so than that is now; for no such thing as money was anywhere known. Find out something that hath the use and value of money amongst his neighbours, you shall see the same man will begin presently to enlarge his possessions

50. But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its value only from the consent of men, whereof labour yet makes, in great part, the measure, it is plain that men have agreed to a disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver which may be hoarded up without injury to any one, these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequity of private possessions men have made practicable out of the bounds of society and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money; for, in governments, the laws regulate the right of property, and the possession of land is determined by positive constitutions.

51 And thus, I think, it is very easy to conceive how labour could

at first begin a title of property in the common things of nature, and how the spending it upon our uses bounded it. So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and convenience went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for encroachment on the right of others; what portion a man carved to himself was easily seen, and it was useless, as well as dishonest, to carve himself too much or take more than he needed.

CHAPTER VI

OF PATERNAL POWER

52. IT MAY PERHAPS be censured as an impertinent criticism, in a discourse of this nature, to find fault with words and names that have obtained in the world; and yet possibly it may not be amiss to offer new ones when the old are apt to lead men into mistakes, as this of "paternal power" probably has done, which seems so to place the power of parents over their children wholly in the father, as if the mother had no share in it; whereas, if we consult reason or revelation, we shall find she hath an equal title. This may give one reason to ask whether this might not be more properly called "parental power," for whatever obligation nature and the right of generation lays on children, it must certainly bind them equally to both concurrent causes of it. And accordingly we see the positive law of God everywhere joins them together without distinction when it commands the obedience of children: "Honour thy father and thy mother" (Exod. xx. 12); "Whosoever curseth his father or his mother" (Lev. xx. 9); "Ye shall fear every man his mother and his father" (Lev. xix. 5); "Children, obey your parents," etc. (Eph. vi. 1), is the style of the Old and New Testament.

53. Had but this one thing been well considered, without looking any deeper into the matter, it might perhaps have kept men from

running into those gross mistakes they have made about this power of parents, which, however it might without any great harshness bear the name of absolute dominion and regal authority when under the title of paternal power it seemed appropriated to the father, would yet have sounded but oddly and in the very name shown the absurdity, if this supposed absolute power over children had been called parental, and thereby have discovered that it belonged to the mother too; for it will but very ill serve the turn of those men who contend so much for the absolute power and authority of the fatherhood, as they call it, that the mother should have any share in it; and it would have but ill supported the monarchy they contend for, when by the very name it appeared that that fundamental authority from whence they would derive their government of a single person only was not placed in one but two persons jointly. But to let this of names pass.

54. Though I have said above (Chap. II) "that all men by nature are equal," I cannot be supposed to understand all sorts of equality. Age or virtue may give men a just precedency; excellency of parts and merit may place others above the common level; birth may subject some, and alliance or benefits others, to pay an observance to those whom nature, gratitude, or other respects may have made it due; and yet all this consists with the equality which all men are in, in respect of jurisdiction or dominion one over another, which was the equality I there spoke of as proper to the business in hand, being that equal right that every man hath to his natural freedom, without being subjected to the will or authority of any other man.

55. Children, I confess, are not born in this state of equality, though they are born to it. Their parents have a sort of rule and jurisdiction over them when they come into the world, and for some time after, but it is but a temporary one. The bonds of this subjection are like the swaddling clothes they are wrapt up in and supported by in the weakness of their infancy; age and reason, as they grow up, loose them, till at length they drop quite off and leave a man at his own free disposal.

56. Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable from the first instant of his being to provide for his own support and preservation and govern his actions according to the dictates of the law of

reason which God had implanted in him. From him the world is peopled with his descendants who are all born infants, weak and helpless, without knowledge or understanding; but to supply the defects of this imperfect state till the improvement of growth and age hath removed them, Adam and Eve, and after them all parents, were, by the law of nature, "under an obligation to preserve, nourish, and educate the children" they had begotten; not as their own workmanship, but the workmanship of their own Maker, the Almighty, to whom they were to be accountable for them.

57. The law that was to govern Adam was the same that was to govern all his posterity — the law of reason. But his offspring having another way of entrance into the world, different from him, by a natural birth that produced them ignorant and without the use of reason, they were not presently under that law; for nobody can be under a law which is not promulgated to him; and this law being promulgated or made known by reason only, he that is not come to the use of his reason cannot be said to be under this law; and Adam's children, being not presently as soon as born under this law of reason, were not presently free; for law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law. Could they be happier without it, the law, as a useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, the end of law is not to abolish or restrain but to preserve and enlarge freedom; for in all the states of created beings capable of laws, where there is no law, there is no freedom. For liberty is to be free from restraint and violence from others, which cannot be where there is not law; but freedom is not, as we are told: a liberty for every man to do what he lists — for who could be free, when every other man's humour might domineer over him? — but a liberty to dispose and order as he lists his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

58. The power, then, that parents have over their children arises from that duty which is incumbent on them — to take care of their offspring during the imperfect state of childhood. To inform the

mind and govern the actions of their yet ignorant nonage till reason shall take its place and ease them of that trouble is what the children want and the parents are bound to; for God, having given man an understanding to direct his actions, has allowed him a freedom of will and liberty of acting as properly belonging thereunto, within the bounds of that law he is under. But whilst he is in an estate wherein he has not understanding of his own to direct his will, he is not to have any will of his own to follow; he that understands for him must will for him too; he must prescribe to his will and regulate his actions; but when he comes to the estate that made his father a freeman, the son is a freeman too.

59. This holds in all the laws a man is under, whether natural or civil. Is a man under the law of nature? What made him free of that law? What gave him a free disposing of his property, according to his own will, within the compass of that law? I answer, a state of maturity wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it. When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom, and so comes to have it; till then, somebody else must guide him who is presumed to know how far the law allows a liberty. If such a state of reason, such an age of discretion, made him free, the same shall make his son free too. Is a man under the law of England? What made him free of that law, that is, to have the liberty to dispose of his actions and possessions according to his own will, within the permission of that law? A capacity of knowing that law; which is supposed by that law at the age of one-and-twenty years, and in some cases sooner. If this made the father free, it shall make the son free too. Till then we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian who is to understand for him. And if the father die and fail to substitute a deputy in his trust, if he hath not provided a tutor to govern his son during his minority, during his want of understanding, the law takes care to do it. Some other must govern him, and be a will to him, till he hath attained to a state of freedom and his understanding be fit to take the government of his will. But after that the father and son are equally free as much as tutor and pupil after nonage; equally subjects of the same law together, without any dominion left in the

father over the life, liberty, or estate of his son, whether they be only in the state and under the law of nature, or under the positive laws of an established government.

60. But if, through defects that may happen out of the ordinary course of nature, any one comes not to such a degree of reason wherein he might be supposed capable of knowing the law and so living within the rules of it, he is never capable of being a free man, he is never let loose to the disposal of his own will — because he knows no bounds to it, has not understanding, its proper guide — but is continued under the tuition and government of others all the time his own understanding is incapable of that charge. And so lunatics and idiots are never set free from the government of their parents.

Children, who are not as yet come unto those years whereat they may have; and innocents which are excluded by a natural defect from ever having; thirdly, madmen which for the present cannot possibly have the use of right reason to guide themselves; have for their guide the reason that guideth other men which are tutors over them to seek and procure their good for them,

says Hooker (*Ecccl. Pol.* lib. i. sect. 7). All which seems no more than that duty which God and nature has laid on man as well as other creatures — to preserve their offspring till they can be able to shift for themselves — and will scarce amount to an instance or proof of parents' regal authority.

61. Thus we are born free as we are born rational, not that we have actually the exercise of either; age, that brings one, brings with it the other, too. And thus we see how natural freedom and subjection to parents may consist together and are both founded on the same principle. A child is free by his father's title, by his father's understanding which is to govern him till he hath it of his own. The freedom of a man at years of discretion, and the subjection of a child to his parents whilst yet short of that age, are so consistent and so distinguishable that the most blinded contenders for monarchy by "right of fatherhood" cannot miss this difference; the most obstinate cannot but allow their consistency. For were their doctrine all true, were the right heir of Adam now known and by that title settled a monarch in his throne, invested with all the absolute unlimited power Sir Robert Filmer talks of; if he should die as soon as his heir were born, must not the child, notwithstanding he were ever so free, ever

so much sovereign, be in subjection to his mother and nurse, to tutors and governors, till age and education brought him reason and ability to govern himself and others? The necessities of his life, the health of his body, and the information of his mind would require him to be directed by the will of others and not his own; and yet will any one think that this restraint and subjection were inconsistent with, or spoiled him of, that liberty or sovereignty he had a right to, or gave away his empire to those who had the government of his nonage? This government over him only prepared him the better and sooner for it. If anybody should ask me when my son is of age to be free, I shall answer, "Just when his monarch is of age to govern." "But at what time," says the judicious Hooker (*Eccl. Pol.* lib. i. sect. 6), "a man may be said to have attained so far forth the use of reason as sufficeth to make him capable of those laws whereby he is then bound to guide his actions, this is a great deal more easy for sense to discern than for any one by skill and learning to determine."

62. Commonwealths themselves take notice of and allow that there is a time when men are to begin to act like freemen, and therefore till that time require not oaths of fealty, or allegiance, or other public owning of, or submission to, the government of their countries.

63. The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty before he has reason to guide him is not the allowing him the privilege of his nature to be free, but to thrust him out amongst brutes and abandon him to a state as wretched and as much beneath that of a man as theirs. This is that which puts the authority into the parents' hands to govern the minority of their children. God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good as long as they should need to be under it.

64. But what reason can hence advance this care of the parents due to their offspring into an absolute arbitrary dominion of the father, whose power reaches no farther than, by such a discipline as he finds most effectual, to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his

children to be most useful to themselves and others; and, if it be necessary to his condition, to make them work, when they are able, for their own subsistence. But in this power the mother, too, has her share with the father.

65. Nay, this power so little belongs to the father by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them he loses his power over them which goes along with their nourishment and education to which it is inseparably annexed; and it belongs as much to the foster-father of an exposed child as to the natural father of another. So little power does the bare act of begetting give a man over his issue, if all his care ends there and this be all the title he hath to the name and authority of a father. And what will become of this paternal power in that part of the world where one woman hath more than one husband at a time, or in those parts of America where, when the husband and wife part, which happens frequently, the children are all left to the mother, follow her, and are wholly under her care and provision? If the father die whilst the children are young, do they not naturally everywhere owe the same obedience to their mother during their minority as to their father, were he alive; and will any one say that the mother hath a legislative power over her children, that she can make standing rules, which shall be of perpetual obligation, by which they ought to regulate all the concerns of their property, and bound their liberty all the course of their lives? Or can she enforce the observation of them with capital punishments? For this is the proper power of the magistrate, of which the father hath not so much as the shadow. His command over his children is but temporary and reaches not their life or property; it is but a help to the weakness and imperfection of their nonage, a discipline necessary to their education; and though a father may dispose of his own possessions as he pleases when his children are out of danger of perishing for want, yet his power extends not to the lives or goods which either their own industry or another's bounty has made theirs; nor to their liberty neither when they are once arrived to the enfranchisement of the years of discretion. The father's empire then ceases, and he can from thenceforwards no more dispose of the liberty of his son than that of any other man; and it must be far from an absolute or perpetual jurisdiction from which a man may withdraw himself, having licence from divine authority to "leave father and mother and cleave to his wife."

66. But though there be a time when a child comes to be as free from subjection to the will and command of his father as the father himself is free from subjection to the will of anybody else, and they are each under no other restraint but that which is common to them both, whether it be the law of nature or municipal law of their country, yet this freedom exempts not a son from that honour which he ought, by the law of God and nature, to pay his parents. God having made the parents instruments in his great design of continuing the race of mankind and the occasions of life to their children, as he hath laid on them an obligation to nourish, preserve, and bring up their offspring, so he has laid on the children a perpetual obligation of honouring their parents, which, containing in it an inward esteem and reverence to be shown by all outward expressions, ties up the child from anything that may ever injure or affront, disturb, or endanger the happiness or life of those from whom he received his, and engages him in all actions of defence, relief, assistance, and comfort of those by whose means he entered into being, and has been made capable of any enjoyments of life. From this obligation no state, no freedom, can absolve children. But this is very far from giving parents a power of command over their children, or an authority to make laws and dispose as they please of their lives and liberties. It is one thing to owe honour, respect, gratitude, and assistance, another to require an absolute obedience and submission. The honour due to parents, a monarch in his throne owes his mother, and yet this lessens not his authority, nor subjects him to her government.

67. The subjection of a minor places in the father a temporary government which terminates with the minority of the child, and the honour due from a child places in the parents a perpetual right to respect, reverence, support, and compliance, too, more or less as the father's care, cost, and kindness in his education have been more or less. This ends not with minority, but holds in all parts and conditions of a man's life. The want of distinguishing these two powers — viz., that which the father hath in the right of tuition, during minority, and the right of honour all his life — may perhaps have caused a great part of the mistakes about this matter, for, to speak properly of them, the first of these is rather the privilege of children and duty of parents than any prerogative of paternal power. The nourishment and education of their children is a charge so incumbent on parents for their children's good that nothing can absolve them from taking care

of it. And though the power of commanding and chastising them go along with it, yet God hath woven into the principles of human nature such a tenderness for their offspring that there is little fear that parents should use their power with too much rigour; the excess is seldom on the severe side, the strong bias of nature drawing the other way. And therefore God Almighty, when he would express his gentle dealing with the Israelites, he tells them that, though he chastened them, "he chastened them as a man chastens his son" (Deut. viii. 5) — *i. e.*, with tenderness and affection, and kept them under no severer discipline than what was absolutely best for them, and had been less kindness to have slackened. This is that power to which children are commanded obedience, that the pains and care of their parents may not be increased or ill rewarded.

68. On the other side, honour and support, all that which gratitude requires to return for the benefits received by and from them, is the indispensable duty of the child and the proper privilege of the parents. This is intended for the parents' advantage as the other is for the child's; though education, the parents' duty, seems to have most power because the ignorance and infirmities of childhood stand in need of restraint and correction, which is a visible exercise of rule, and a kind of dominion. And that duty which is comprehended in the word "honour" requires less obedience, though the obligation be stronger on grown than younger children; for who can think the command, "Children obey your parents," requires in a man that has children of his own the same submission to his father as it does in his yet young children to him, and that by this precept he were bound to obey all his father's commands, if out of a conceit of authority he should have the indiscretion to treat him still as a boy.

69. The first part then of paternal power, or rather duty, which is education, belongs so to the father that it terminates at a certain season; when the business of education is over, it ceases of itself and is also alienable before, for a man may put the tuition of his son in other hands; and he that has made his son an apprentice to another has discharged him during that time of a great part of his obedience both to himself and to his mother. But all the duty of honour, the other part, remains nevertheless entire to them; nothing can cancel that; it is so inseparable from them both that the father's authority cannot dispossess the mother of this right, nor can any man discharge

his son from honouring her that bore him. But both these are very far from a power to make laws, and enforcing them with penalties that may reach estate, liberty, limbs, and life. The power of commanding ends with nonage; and though, after that, honour and respect, support and defence, and whatsoever gratitude can oblige a man to, for the highest benefits he is naturally capable of, be always due from a son to his parents, yet all this puts no sceptre into the father's hand, no sovereign power of commanding. He has no dominion over his son's property or actions, nor any right that his will should prescribe to his son's in all things, however it may become his son in many things not very inconvenient to him and his family to pay a deference to it.

70. A man may owe honour and respect to an ancient or wise man, defence to his child or friend, relief and support to the distressed, and gratitude to a benefactor, to such a degree that all he has, all he can do, cannot sufficiently pay it; but all these give no authority, no right to *any one*, of making laws over him from whom they are owing. And it is plain all this is due not only to the bare title of father, not only because, as has been said, it is owing to the mother, too, but because these obligations to parents and the degrees of what is required of children may be varied by the different care and kindness, trouble and expense, which are often employed upon one child more than another.

71. This shows the reason how it comes to pass that parents in societies, where they themselves are subjects, retain a power over their children, and have as much right to their subjection as those who are in the state of nature. Which could not possibly be if all political power were only paternal, and that, in truth, they were one and the same thing; for then, all paternal power being in the prince, the subject could naturally have none of it. But these two powers, political and paternal, are so perfectly distinct and separate, are built upon so different foundations, and given to so different ends, that every subject that is a father has as much a paternal power over his children as the prince has over his, and every prince that has parents owes them as much filial duty and obedience as the meanest of his subjects do theirs, and cannot therefore contain any part or degree of that kind of dominion which a prince or magistrate has over his subjects.

72. Though the obligation on the parents to bring up their children, and the obligation on children to honour their parents, contain all the power on the one hand and submission on the other, which are proper to this relation, yet there is another power ordinary in the father whereby he has a tie on the obedience of his children; which, though it be common to him with other men, yet, the occasions of showing it almost constantly happening to fathers in their private families, and the instances of it elsewhere being rare and less taken notice of, it passes in the world for a part of paternal jurisdiction. And this is the power men generally have to bestow their estates on those who please them best; the possession of the father being the expectation and inheritance of the children, ordinarily in certain proportions according to the law and custom of each country, yet it is commonly in the father's power to bestow it with a more sparing or liberal hand, according as the behaviour of this or that child hath comported with his will and humour.

73. This is no small tie on the obedience of children; and there being always annexed to the enjoyment of land a submission to the government of the country of which that land is a part, it has been commonly supposed that a father could oblige his posterity to that government of which he himself was a subject, and that his compact held them; whereas it, being only a necessary condition annexed to the land and the inheritance of an estate which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement but a voluntary submission; for every man's children, being by nature as free as himself or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under. But if they will enjoy the inheritance of their ancestors, they must take it on the same terms their ancestors had it and submit to all the conditions annexed to such a possession. By this power, indeed, fathers oblige their children to obedience to themselves, even when they are past minority, and most commonly, too, subject them to this or that political power; but neither of these by any peculiar right of fatherhood, but by the reward they have in their hands to enforce and recompense such a compliance; and is no more power than what a Frenchman has over an Englishman, who, by the hopes of an estate he will leave him, will certainly have a strong ti.

on his obedience. And if, when it is left him, he will enjoy it, he must certainly take it upon the conditions annexed to the possession of land in that country where it lies, whether it be France or England.

74. To conclude, then: though the father's power of commanding extends no farther than the minority of his children, and to a degree only fit for the discipline and government of that age; and though that honour and respect, and all that which the Latins called piety, which they indispensably owe to their parents all their lifetime and in all estates, with all that support and defence which is due to them, gives the father no power of governing — *i. e.*, making laws and enacting penalties on his children; though by all this he has no dominion over the property or actions of his son, yet it is obvious to conceive how easy it was, in the first ages of the world, and in places still where the thinness of people gives families leave to separate into unpossessed quarters, and they have room to remove or plant themselves in yet vacant habitations, for the father of the family to become the prince¹ of it. He had been a ruler from the beginning of the infancy of his children; and, since without some government it would be hard for them to live together, it was likeliest it should, by the express or tacit consent of the children when they were grown up, be in the father where it seemed without any change barely to continue; when indeed nothing more was required to it than the permitting the father to exercise alone, in his family, that executive power of the law of nature which every free man naturally hath, and by that permission resigning up to him a monarchical power whilst they remained in it. But that this was not by any paternal right but only

¹ It is no improbable opinion, therefore, which the arch-philosopher was of, "That the chief person in every household was always, as it were, a king so when numbers of households joined themselves in civil societies together, kings were the first kind of governors amongst them, which is also, as it seemeth, the reason why the name of fathers continued still in them, who, of fathers, were made rulers, as also the ancient custom of governors to do as Melchizedeck and, being kings, to exercise the office of priests, which fathers did at the first, grew perhaps by the same occasion. Howbeit, this is not the only kind of regiment that has been received in the world. The inconveniencies of one kind have caused sundry others to be devised, so that, in a word, all public regiment, of what kind soever, seemeth evidently to have risen from the deliberate advice, consultation, and composition between men, judging it convenient and behoveful, there being no impossibility in nature considered by itself but that man might have lived without any public regiment." (Hooker's *Eccles. P. lib. i. sect. 10*).

by the consent of his children is evident from hence — that nobody doubts. But if a stranger, whom chance or business had brought to his family, had there killed any of his children or committed any other fact, he might condemn and put him to death, or otherwise punish him as well as any of his children, which it was impossible he should do by virtue of any paternal authority over one who was not his child, but by virtue of that executive power of the law of nature which, as a man, he had a right to; and he alone could punish him in his family, where the respect of his children had laid by the exercise of such a power to give way to the dignity and authority they were willing should remain in him, above the rest of his family.

75. Thus it was easy and almost natural for children, by a tacit and scarce avoidable consent, to make way for the father's authority and government. They had been accustomed in their childhood to follow his direction and to refer their little differences to him; and when they were men, who fitter to rule them? Their little properties, and less covetousness, seldom afforded greater controversies; and when any should arise, where could they have a fitter umpire than he by whose care they had every one been sustained and brought up and who had a tenderness for them all? It is no wonder that they made no distinction betwixt minority and full age; nor looked after one-and-twenty, or any other age that might make them the free disposers of themselves and fortunes, when they could have no desire to be out of their pupilage; the government they had been under during it, continued still to be more their protection than restraint, and they could nowhere find a greater security to their peace, liberties, and fortunes than in the rule of a father.

76. Thus the natural fathers of families by an insensible change became the politic monarchs of them too; and, as they chanced to live long, and leave able and worthy heirs for several successions, or otherwise, so they laid the foundations of hereditary or elective kingdoms under several constitutions and manners, according as chance, contrivance, or occasions happened to mould them. But if princes have their titles in their father's right, and it be a sufficient proof of the natural right of fathers to political authority because they commonly were those in whose hands we find, *de facto*, the exercise of government — I say, if this argument be good, it will as strongly prove that all princes, nay, princes only, ought to be priests, since it

is as certain that in the beginning "the father of the family was priest, as that he was ruler in his own household."

CHAPTER VII

OF POLITICAL OR CIVIL SOCIETY

77. GOD, HAVING made man such a creature that in his own judgment it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination to drive him into society, as well as fitted him with understanding and language to continue and enjoy it. The first society was between man and wife, which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added; and though all these might, and commonly did, meet together and make up but one family wherein the master or mistress of it had some sort of rule proper to a family — each of these, or all together, came short of political society, as we shall see if we consider the different ends, ties, and bounds of each of these.

78. Conjugal society is made by a voluntary compact between man and woman; and though it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation, yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common offspring who have a right to be nourished and maintained by them till they are able to provide for themselves.

79. For the end of conjunction between male and female being not barely procreation but the continuation of the species, this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones who are to be sustained by those that got them till they are able to shift and provide for themselves. This rule, which the infinite wise Maker hath set to the works of his hands, we find the inferior creatures steadily obey. In those viviparous animals

which feed on grass, the conjunction between male and female lasts no longer than the very act of copulation, because the teat of the dam being sufficient to nourish the young till it be able to feed on grass, the male only begets, but concerns not himself for the female or young to whose sustenance he can contribute nothing. But in beasts of prey the conjunction lasts longer because, the dam not being able well to subsist herself and nourish her numerous offspring by her own prey alone, a more laborious as well as more dangerous way of living than by feeding on grass, the assistance of the male is necessary to the maintenance of their common family, which cannot subsist till they are able to prey for themselves but by the joint care of male and female. The same is to be observed in all birds — except some domestic ones, where plenty of food excuses the cock from feeding and taking care of the young brood — whose young needing food in the nest, the cock and hen continue mates till the young are able to use their wing and provide for themselves.

80. And herein, I think, lies the chief, if not the only, reason why the male and female in mankind are tied to a longer conjunction than other creatures, viz., because the female is capable of conceiving, and *de facto* is commonly with child again and brings forth, too, a new birth long before the former is out of a dependency for support on his parents' help and able to shift for himself and has all the assistance that is due to him from his parents; whereby the father, who is bound to take care for those he hath begot, is under an obligation to continue in conjugal society with the same woman longer than other creatures whose young being able to subsist of themselves before the time of procreation returns again, the conjugal bond dissolves of itself, and they are at liberty, till Hymen at his usual anniversary season summons them again to choose new mates. Wherein one cannot but admire the wisdom of the great Creator, who, having given to man foresight and an ability to lay up for the future as well as to supply the present necessity, hath made it necessary that society of man and wife should be more lasting than of male and female amongst other creatures, that so their industry might be encouraged and their interest better united to make provision and lay up goods for their common issue, which uncertain mixture or easy and frequent solutions of conjugal society would mightily disturb.

81. But though these are ties upon mankind which make the

conjugal bonds more firm and lasting in man than the other species of animals, yet it would give one reason to inquire why this compact, where procreation and education are secured and inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain conditions, as well as any other voluntary compacts, there being no necessity in the nature of the thing nor to the ends of it that it should always be for life; I mean, to such as are under no restraint of any positive law which ordains all such contracts to be perpetual.

82. But the husband and wife, though they have but one common concern, yet having different understandings, will unavoidably sometimes have different wills too; it therefore being necessary that the last determination — *i.e.*, the rule — should be placed somewhere, it naturally falls to the man's share, as the abler and the stronger. But this, reaching but to the things of their common interest and property, leaves the wife in the full and free possession of what by contract is her peculiar right, and gives the husband no more power over her life than she has over his; the power of the husband being so far from that of an absolute monarch that the wife has in many cases a liberty to separate from him where natural right or their contract allows it, whether that contract be made by themselves in the state of nature, or by the customs or laws of the country they live in; and the children upon such separation fall to the father's or mother's lot, as such contract does determine.

83. For all the ends of marriage being to be obtained under politic government as well as in the state of nature, the civil magistrate doth not abridge the right or power of either naturally necessary to those ends, *viz.*, procreation and mutual support and assistance whilst they are together, but only decides any controversy that may arise between man and wife about them. If it were otherwise, and that absolute sovereignty and power of life and death naturally belonged to the husband and were necessary to the society between man and wife, there could be no matrimony in any of those countries where the husband is allowed no such absolute authority. But the ends of matrimony requiring no such power in the husband, the condition of conjugal society put it not in him, it being not at all necessary to that state. Conjugal society could subsist and attain its ends without it; nay, community of goods and the power over

them, mutual assistance and maintenance, and other things belonging to conjugal society, might be varied and regulated by that contract which unites man and wife in that society as far as may consist with procreation and the bringing up of children till they could shift for themselves, nothing being necessary to any society that is not necessary to the ends for which it is made.

84. The society betwixt parents and children, and the distinct rights and powers belonging respectively to them, I have treated of so largely in the foregoing chapter that I shall not here need to say anything of it. And I think it is plain that it is far different from a politic society.

85. Master and servant are names as old as history, but given to those of far different condition; for a freeman makes himself a servant to another by selling him, for a certain time, the service he undertakes to do in exchange for wages he is to receive; and though this commonly puts him into the family of his master and under the ordinary discipline thereof, yet it gives the master but a temporary power over him and no greater than what is contained in the contract between them. But there is another sort of servants which by a peculiar name we call slaves, who, being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters. These men, having, as I say, forfeited their lives and with it their liberties, and lost their estates, and being in the state of slavery not capable of any property, cannot in that state be considered as any part of civil society, the chief end whereof is the preservation of property.

86. Let us therefore consider a master of a family with all these subordinate relations of wife, children, servants, and slaves, united under the domestic rule of a family; which, what resemblance soever it may have in its order, offices, and number, too, with a little commonwealth, yet is very far from it, both in its constitution, power, and end; or, if it must be thought a monarchy, and the paterfamilias the absolute monarch in it, absolute monarchy will have but a very shattered and short power when it is plain, by what has been said before, that the master of the family has a very distinct and differently limited power both as to time and extent over those several persons that are in it; for excepting the slave — and the family is as much a family, and his power as paterfamilias as great, whether there be any slaves

in his family or no — he has no legislative power of life and death over any of them, and none, too, but what a mistress of a family may have as well as he. And he certainly can have no absolute power over the whole family who has but a very limited one over every individual in it. But how a family or any other society of men differ from that which is properly political society, we shall best see by considering wherein political society itself consists.

· 87. Man, being born, as has been proved, with a title to perfect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature equally with any other man or number of men in the world, hath by nature a power not only to preserve his property — that is, his life, liberty, and estate — against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others as he is persuaded the offence deserves, even with death itself in crimes where the heinousness of the fact in his opinion requires it. But because no political society can be, nor subsist, without having in itself the power to preserve the property and, in order thereunto, punish the offences of all those of that society, there and there only is political society where every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that excludes him not from appealing for protection to the law established by it. And thus, all private judgment of every particular member being excluded, the community comes to be umpire by settled standing rules, indifferent and the same to all parties, and by men having authority from the community for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member hath committed against the society with such penalties as the law has established; whereby it is easy to discern who are, and who are not, in political society together. Those who are united into one body and have a common established law and judicature to appeal to, with authority to decide controversies between them and punish offenders, are in civil society one with another; but those who have no such common appeal, I mean on earth, are still in the state of nature, each being, where there is no other, judge for himself and executioner, which is, as I have before shown it, the perfect state of nature.

88. And thus the commonwealth comes by a power to set down

what punishment shall belong to the several transgressions which they think worthy of it committed amongst the members of that society — which is the power of making laws — as well as it has the power to punish any injury done unto any of its members by any one that is not of it — which is the power of war and peace — and all this for the preservation of the property of all the members of that society as far as is possible. But though every man who has entered into civil society and is become a member of any commonwealth has thereby quitted his power to punish offences against the law of nature in prosecution of his own private judgment, yet, with the judgment of offences which he has given up to the legislative in all cases where he can appeal to the magistrate, he has given a right to the commonwealth to employ his force for the execution of the judgments of the commonwealth, whenever he shall be called to it; which, indeed, are his own judgments, they being made by himself or his representative. And herein we have the original of the legislative and executive power of civil society which is to judge by standing laws how far offences are to be punished when committed within the commonwealth, and also to determine, by occasional judgments founded on the present circumstances of the fact, how far injuries from without are to be vindicated; and in both these to employ all the force of all the members when there shall be need.

89. Whenever, therefore, any number of men are so united into one society as to quit every one his executive power of the law of nature and to resign it to the public, there and there only is a political or civil society. And this is done wherever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government, or else when any one joins himself to, and incorporates with, any government already made; for hereby he authorizes the society or, which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance, as to his own degrees, is due. And this puts men out of a state of nature into that of a commonwealth by setting up a judge on earth, with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth; which judge is the legislative, or magistrate appointed by it. And wherever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in the state of nature.

90. Hence it is evident that absolute monarchy, which by some men is counted the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all; for the end of civil society being to avoid and remedy these inconveniences of the state of nature which necessarily follow from every man being judge in his own case, by setting up a known authority to which everyone of that society may appeal upon any injury received or controversy that may arise, and which everyone of the society ought to obey.² Wherever any persons are who have not such an authority to appeal to for the decision of any difference between them, there those persons are still in the state of nature; and so is every absolute prince, in respect of those who are under his dominion.

✓91. For he being supposed to have all, both legislative and executive, power in himself alone, there is no judge to be found, no appeal lies open to any one who may fairly and indifferently and with authority decide, and from whose decision relief and redress may be expected of any injury or inconvenience that may be suffered from the prince or by his order; so that such a man, however entitled, "czar," or "grand seignior," or how you please, is as much in the state of nature with all under his dominion as he is with the rest of mankind; for wherever any two men are who have no standing rule and common judge to appeal to on earth for the determination of controversies of right betwixt them, there they are still in the state of nature,³ and under

² "The public power of all society is above every soul contained in the same society; and the principal use of that power is to give laws unto all that are under it which laws in such cases we must obey, unless there be reason showed which may, necessarily enforce that the law of reason, or of God, doth enjoin the contrary" (Hooker's *Ecccl. Pol.* lib. i. sect. 16).

³ "To take away all such mutual grievances, injuries and wrongs," *i. e.*, such as attend men in the state of nature, "there was no way but only by growing into composition and agreement amongst themselves by ordaining some kind of government public, and by yielding themselves subject thereunto, that unto whom they granted authority to rule and govern, by them the peace, tranquillity, and happy state of the rest might be procured. Men always knew that where force and injury was offered, they might be defenders of themselves; they knew that however men may seek their own commodity, yet if this were done with injury unto others, it was not to be suffered, but by all men and all good means to be withstood. Finally, they knew that no man might in reason take upon him to determine his own right, and according to his own determination proceed in maintenance thereof, inasmuch as every man is towards himself, and them whom he greatly affects, partial; and

all the inconveniences of it, with only this woeful difference to the subject, or rather slave, of an absolute prince: that, whereas in the ordinary state of nature he has a liberty to judge of his right and, according to the best of his power, to maintain it, now, whenever his property is invaded by the will and order of his monarch, he has not only no appeal as those in society ought to have but, as if he were degraded from the common state of rational creatures, is denied a liberty to judge of or to defend his right; and so is exposed to all the misery and inconveniences that a man can fear from one who, being in the unrestrained state of nature, is yet corrupted with flattery and armed with power.

92. For he that thinks absolute power purifies men's blood and corrects the baseness of human nature, need read but the history of this or any other age to be convinced of the contrary. He that would have been so insolent and injurious in the woods of America would not probably be much better in a throne, where perhaps learning and religion shall be found out to justify all that he shall do to his subjects, and the sword presently silence all those that dare question it; for what the protection of absolute monarchy is, what kind of fathers of their countries it makes princes to be, and to what a degree of happiness and security it carries civil society, where this sort of government is grown to perfection, he that will look into the late relation of Ceylon may easily see.

93. In absolute monarchies, indeed, as well as other governments of the world, the subjects have an appeal to the law and judges to decide any controversies and restrain any violence that may happen betwixt the subjects themselves, one amongst another. This everyone thinks necessary, and believes he deserves to be thought a declared enemy to society and mankind who should go about to take it away. But whether this be from a true love of mankind and society, and such a charity as we all owe one to another, there is reason to doubt; for this is no more than what every man who loves his own power, profit, or greatness may and naturally must do, keep those animals from hurting or destroying one another who labour and drudge only for therefore that strifes and troubles would be endless except they gave their common consent all to be ordered by some whom they should agree upon, without which consent there would be no reason that one man should take upon him to be lord or judge over another" (Hooker's *Ecc. Pol.* lib. i. sect. 10).

his pleasure and advantage; and so are taken care of, not out of any love the master has for them, but love of himself and the profit they bring him; for if it be asked, what security, what fence is there, in such a state, against the violence and oppression of this absolute ruler, the very question can scarce be borne. They are ready to tell you that it deserves death only to ask after safety. Betwixt subject and subject, they will grant, there must be measures, laws, and judges, for their mutual peace and security; but as for the ruler, he ought to be absolute and is above all such circumstances; because he has power to do more hurt and wrong, it is right when he does it. To ask how you may be guarded from harm or injury on that side where the strongest hand is to do it, is presently the voice of faction and rebellion, as if when men, quitting the state of nature, entered into society, they agreed that all of them but one should be under the restraint of laws, but that he should still retain all the liberty of the state of nature, increased with power and made licentious by impunity. This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions.

94. But whatever flatterers may talk to amuse people's understandings, it hinders not men from feeling; and when they perceive that any man, in what station soever, is out of the bounds of the civil society which they are of, and that they have no appeal on earth against any harm they may receive from him, they are apt to think themselves in the state of nature in respect of him whom they find to be so, and to take care, as soon as they can, to have that safety and security in civil society for which it was instituted, and for which only they entered into it. And therefore, though perhaps at first — as shall be shown more at large hereafter in the following part of this discourse — some one good and excellent man, having got a pre-eminency amongst the rest, had this deference paid to his goodness and virtue as to a kind of natural authority that the chief rule with arbitration of their differences by a tacit consent devolved into his hands, without any other caution but the assurance they had of his uprightness and wisdom; yet when time, giving authority and, as some men would persuade us, sacredness to customs which the negligent and unforeseeing innocence of the first ages began, had brought in successors of another stamp, the people, finding their

properties not secure under the government as then it was — whereas government has no other end but the preservation of⁴ property — could never be safe nor at rest nor think themselves in civil society till the legislature was placed in collective bodies of men, call them “senate,” “parliament,” or what you please. By which means every single person became subject, equally with other the meanest men, to those laws which he himself, as part of the legislative, had established; nor could any one, by his own authority, avoid the force of the law when once made, nor by any pretence of superiority plead exemption, thereby to license his own or the miscarriages of any of his dependents. “No man in civil society can be exempted from the laws of it;”⁵ for if any man may do what he thinks fit, and there be no appeal on earth for redress or security against any harm he shall do, I ask whether he be not perfectly still in the state of nature, and so can be no part or member of that civil society; unless any one will say the state of nature and civil society are one and the same thing, which I have never yet found any one so great a patron of anarchy as to affirm.

CHAPTER VIII

OF THE BEGINNING OF POLITICAL SOCIETIES

95. MEN BEING, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent. The only way whereby any one divests himself of his natural liberty, and puts

⁴ “At the first, when some certain kind of regiment was once appointed, it may be that nothing was then farther thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy did indeed but increase the sore which it should have cured. They saw, that to live by one man’s will became the cause of all men’s misery. This constrained them to come into laws wherein all men might see their duty beforehand and know the penalties of transgressing them” (Hooker’s *Eccles. Pol.* lib. i, sect 10).

⁵ “Civil law, being the act of the whole body politic, doth therefore overrule each several part of the same body” (Hooker, *Ibid.*).

on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated and make one body politic wherein the majority have a right to act and conclude the rest.

96. For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority; for that which acts any community being only the consent of the individuals of it, and it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority; or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see that in assemblies impowered to act by positive laws, where no number is set by that positive law which impowers them, the act of the majority passes for the act of the whole, and, of course, determines, as having by the law of nature and reason the power of the whole.

97. And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact, if he be left free and under no other ties than he was in before in the state of nature. For what appearance would there be of any compact? What new engagement if he were no farther tied by any decrees of the society than he himself thought fit and did actually consent to? This would be still as great a liberty as he himself had before his compact, or any one else in the state of nature hath who may submit himself and consent to any acts of it if he thinks fit

98. For if the consent of the majority shall not in reason be received as the act of the whole and conclude every individual, nothing but the consent of every individual can make anything to be the act of the whole; but such a consent is next to impossible ever to be had if we consider the infirmities of health and avocations of business which in a number, though much less than that of a commonwealth, will necessarily keep many away from the public assembly. To which, if we add the variety of opinions and contrariety of interests which unavoidably happen in all collections of men, the coming into society upon such terms would be only like Cato's coming into the theatre only to go out again.¹ Such a constitution as this would make the mighty leviathan of a shorter duration than the feeblest creatures, and not let it outlast the day it was born in; which cannot be supposed till we can think that rational creatures should desire and constitute societies only to be dissolved; for where the majority cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again.

99. Whosoever, therefore, out of a state of nature unite into a community must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into or make up a commonwealth. And thus that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world.

100. To this I find two objections made:

First, That there are no instances to be found in story of a company of men independent and equal one amongst another that met together and in this way began and set up a government.

Secondly, It is impossible of right that men should do so, because

¹ [Cato Marcus Porcius (239-149 B. C.), called Cato the Elder or Cato the Censor, soldier, lawyer, statesman, and writer, was known for his stern, and what a later age would call a puritanical, morality. He did not approve of theatrical spectacles, and the point here is that his going into the theatre was only in order to go out again.]

all men being born under government, they are to submit to that and are not at liberty to begin a new one.

101. To the first there is this to answer: that it is not at all to be wondered that history gives us but a very little account of men that lived together in the state of nature. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated if they designed to continue together. And if we may not suppose men ever to have been in the state of nature, because we hear not much of them in such a state, we may as well suppose the armies of Salmanasser or Xerxes were never children because we hear little of them till they were men and embodied in armies.² Government is everywhere antecedent to records, and letters seldom come in amongst a people till a long continuation of civil society has, by other more necessary arts, provided for their safety, ease, and plenty; and then they begin to look after the history of their founders and search into their original, when they have outlived the memory of it; for it is with commonwealths as with particular persons, they are commonly ignorant of their own births and infancies; and if they know anything of their original, they are beholden for it to the accidental records that others have kept of it. And those that we have of the beginning of any politics in the world, excepting that of the Jews, where God himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it.

102. He must show a strange inclination to deny evident matter of fact when it agrees not with his hypothesis, who will not allow that the beginnings of Rome and Venice were by the uniting together of several men free and independent one of another, amongst whom there was no natural superiority or subjection.³ And if Josephus

² [Salmanasser, who reigned around 1330 B. C., founded the city of Calah and greatly extended his empire in the northwest. — Xerxes, son of Darius I of Persia, succeeded to the throne in 485 B. C. He is celebrated above all for carrying on the war against the Greeks. He was defeated by the Greeks at Salamis in 480 B. C.]

³ [Modern historians and social scientists would, in fact, deny this explanation of the origins of Rome and Venice, or of any other state. This a priori explanation seemed, however, logically necessary to the rationalist thinkers who rejected the concept of the divine origin of governments, and did not possess modern anthropological and historical knowledge.]

Acosta's word may be taken, he tells us that in many parts of America there was no government at all.⁴

"There are great and apparent conjectures," says he, "that these men," speaking of those of Peru, "for a long time had neither kings nor commonwealths, but lived in troops, as they do this day in Florida, the Cheriquanas, those of Brasil, and many other nations which have no certain kings, but as occasion is offered, in peace or war, they choose their captains as they please" (l. i. c. 25).

If it be said that every man there was born subject to his father or the head of his family, that the subjection due from a child to a father took not away his freedom of uniting into what political society he thought fit, has been already proved. But be that as it will, these men, it is evident, were actually free; and whatever superiority some politicians now would place in any of them, they themselves claimed it not, but by consent were all equal till by the same consent they set rulers over themselves. So that their politic societies all began from a voluntary union and the mutual agreement of men freely acting in the choice of their governors and forms of government.

103. And I hope those who went away from Sparta with Palantus, mentioned by Justin, l. iii. c. 4, will be allowed to have been freemen, independent one of another, and to have set up a government over themselves by their own consent.⁵ Thus I have given several examples

⁴ [José de Acosta (1539?-1600), a Spanish Jesuit, who was a missionary to Peru and theological advisor to the Council of Lima; published a *Catechism*, which was the first book published in Peru. He became Rector of the Jesuit College in Salamanca in 1598. His most celebrated work was his *Historia Natural y Moral de las Indias* (Seville, 1590).]

⁵ [Palantus or Plantos, actually Phalantus, founder of Tarentum. During the first Messinian war the women of Sparta became dissatisfied because of the absence of their husbands, and the Spartans themselves were worried because there were no children, so at the suggestion of a certain Aratus, they decided to send home a group of sturdy young men with the order to have children by all the women whose husbands were absent. The plan succeeded but when the young men who owed their existence to this plan grew up, they found that they were not acknowledged as legitimate sons and therefore could not inherit from the husbands of their mothers. Naturally they were dissatisfied and bitterly accused Aratus who had proposed the plan. Aratus, however, told them that his son Phalantus would take care of them. So they were organized in a group calling themselves *Partheniæ* (Virgin-born) and, under the leadership of Phalantus, they set out to found a colony in Southern Italy. In this way Phalantus, as their leader, became the founder of the city of Tarentum.]

out of history of people free and in the state of nature that, being met together, incorporated and began a commonwealth. And if the want of such instances be an argument to prove that governments were not nor could not be so begun, I suppose the contenders for paternal empire were better let it alone than urge it against natural liberty, for if they can give so many instances out of history of governments begun upon paternal right, I think — though at best an argument from what has been, to what should of right be, has no great force — one might, without any great danger, yield them the cause. But if I might advise them in the case, they would do well not to search too much into the original of governments as they have begun *de facto*, lest they should find at the foundation of most of them something very little favourable to the design they promote and such a power as they contend for.

104. But to conclude, reason being plain on our side that men are naturally free, and the examples of history showing that the governments of the world that were begun in peace had their beginning laid on that foundation, and were made by the consent of the people, there can be little room for doubt either where the right is, or what has been the opinion or practice of mankind about the first erecting of governments.

105. I will not deny that, if we look back as far as history will direct us towards the original of commonwealths, we shall generally find them under the government and administration of one man. And I am also apt to believe that where a family was numerous enough to subsist by itself, and continued entire together without mixing with others, as it often happens where there is much land and few people, the government commonly began in the father; for the father, having by the law of nature the same power with every man else to punish as he thought fit any offences against that law, might thereby punish his transgressing children even when they were men and out of their pupilage; and they were very likely to submit to his punishment and all join with him against the offender, in their turns, giving him thereby power to execute his sentence against any transgression, and so in effect make him the lawmaker and governour over all that remained in conjunction with his family. He was fittest to be trusted; paternal affection secured their property and interest under his care; and the custom of obeying him in their childhood made it easier to submit to

him rather than to any other. If, therefore, they must have one to rule them, as government is hardly to be avoided amongst men that live together, who so likely to be the man as he that was their common father, unless negligence, cruelty, or any other defect of mind or body made him unfit for it? But when either the father died and left his next heir, for want of age, wisdom, courage, or any other qualities, less fit for rule, or where several families met and consented to continue together, there it is not to be doubted but they used their natural freedom to set up him whom they judged the ablest and most likely to rule well over them. Conformable hereunto we find the people of America, who — living out of the reach of the conquering swords and spreading domination of the two great empires of Peru and Mexico — enjoyed their own natural freedom, though, *ceteris paribus*, they commonly prefer the heir of their deceased king; yet, if they find him any way weak or incapable, they pass him by and set up the stoutest and bravest man for their ruler.

106. Thus, though looking back as far as records give us any account of peopling the world and the history of nations, we commonly find the government to be in one hand; yet it destroys not that which I affirm — viz., that the beginning of politic society depends upon the consent of the individuals to join into and make one society; who, when they are thus incorporated, might set up what form of government they thought fit. But this having given occasion to men to mistake and think that by nature government was monarchical and belonged to the father, it may not be amiss here to consider why people in the beginning generally pitched upon this form, which though perhaps the father's pre-eminence might in the first institution of some commonwealth give rise to, and place in the beginning the power in one hand; yet it is plain that the reason that continued the form of government in a single person was not any regard or respect to paternal authority, since all petty monarchies, that is, almost all monarchies, near their original, have been commonly, at least upon occasion, elective.

107. First, then, in the beginning of things, the father's government of the childhood of those sprung from him having accustomed them to the rule of one man and taught them that where it was exercised with care and skill, with affection and love to those under it, it was sufficient to procure and preserve to men all the political happiness

they sought for in society. It was no wonder that they should pitch upon and naturally run into that form of government which from their infancy they had been all accustomed to and which, by experience, they had found both easy and safe. To which, if we add that monarchy being simple and most obvious to men whom neither experience had instructed in forms of government, nor the ambition or insolence of empire had taught to beware of the encroachments of prerogative or the inconveniences of absolute power which monarchy in succession was apt to lay claim to and bring upon them, it was not at all strange that they should not much trouble themselves to think of methods of restraining any exorbitancies of those to whom they had given the authority over them, and of balancing the power of government by placing several parts of it in different hands. They had neither felt the oppression of tyrannical dominion, nor did the fashion of the age, nor their possessions, or way of living, which afforded little matter for covetousness or ambition, give them any reason to apprehend or provide against it; and therefore it is no wonder they put themselves into such a frame of government as was not only, as I said, most obvious and simple, but also best suited to their present state and condition, which stood more in need of defence against foreign invasions and injuries than of multiplicity of laws. The equality of a simple, poor way of living, confining their desires within the narrow bounds of each man's small property, made few controversies, and so no need of many laws to decide them or variety of officers to superintend the process or look after the execution of justice, where there were but few trespasses and offenders. Since, then, those who liked one another so well as to join into society cannot but be supposed to have some acquaintance and friendship together and some trust one in another, they could not but have greater apprehensions of others than of one another; and therefore their first care and thought cannot but be supposed to be how to secure themselves against foreign force. It was natural for them to put themselves under a frame of government which might best serve to that end, and choose the wisest and bravest man to conduct them in their wars and lead them out against their enemies, and in this chiefly be their ruler.

108. Thus we see that the kings of the Indians in America, which is still a pattern of the first ages in Asia and Europe, whilst the inhabitants were too few for the country, and want of people and money

gave men no temptation to enlarge their possessions of land or contest for wider extent of ground, are little more than generals of their armies; and though they command absolutely in war, yet at home and in time of peace they exercise very little dominion and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people or in a council, though the war itself, which admits not of plurality of governors, naturally devolves the command into the king's sole authority.

109. And thus, in Israel itself, the chief business of their judges and first kings seems to have been to be captains in war and leaders of their armies; which — besides what is signified by "going out and in before the people," which was to march forth to war, and home again at the heads of their forces — appears plainly in the story of Jephthah. The Ammonites making war upon Israel, the Gileadites in fear send to Jephthah, a bastard of their family whom they had cast off, and article with him if he will assist them against the Ammonites to make him their ruler; which they do in these words: "And the people made him head and captain over them" (Judges xi. 11), which was, as it seems, all one as to be judge. "And he judged Israel" (Judges xii. 7), that is, was their captain-general, six years. So when Jotham upbraids the Shechemites with the obligation they had to Gideon who had been their judge and ruler, he tells them, "He fought for you, and adventured his life far, and delivered you out of the hands of Midian" (Judges ix. 17). Nothing is mentioned of him but what he did as a general; and indeed that is all is found in his history, or in any of the rest of the judges. And Abimelech particularly is called king, though at most he was but their general. And when, being weary of the ill conduct of Samuel's sons, the children of Israel desired a king, "like all the nations, to judge them, and to go out before them, and to fight their battles" (1 Sam. viii. 20), God granting their desire says to Samuel: "I will send thee a man, and thou shalt anoint him to be captain over my people Israel, that he may save my people out of the hands of the Philistines" (ix. 16), as if the only business of a king had been to lead out their armies and fight in their defence; and, accordingly, Samuel, at his inauguration, pouring a vial of oil upon him, declares to Saul that "the Lord had anointed him to be captain over his inheritance" (x. 1). And, therefore, those who, after Saul's being solemnly chosen and saluted king by the tribes of

Mispeh, were unwilling to have him their king made no other objection but this: "How shall this man save us?" (vs. 27), as if they should have said, "This man is unfit to be our king, not having skill and conduct enough in war to be able to defend us." And when God resolved to transfer the government to David, it is in these words: "But now thy kingdom shall not continue. The Lord hath sought him a man after his own heart, and the Lord hath commanded him to be captain over his people" (xiii. 14), as if the whole kingly authority were nothing else but to be their general. And, therefore, the tribes who had stuck to Saul's family, and opposed David's reign, when they came to Hebron with terms of submission to him, they tell him, amongst other arguments, they had to submit to him as their king; that he was in effect their king in Saul's time, and, therefore, they had no reason but to receive him as their king now. "Also," say they, "in time past, when Saul was king over us, thou wast he that leddest out and broughtest in Israel, and the Lord said unto thee, 'Thou shalt feed my people Israel and thou shalt be a captain over Israel.'"

110. Thus, whether a family by degrees grew up into a commonwealth and, the fatherly authority being continued on to the elder son, every one in his turn growing up under it tacitly submitted to it; and the easiness and equality of it not offending any one, every one acquiesced, till time seemed to have confirmed it and settled a right of succession by prescription; or whether several families, or the descendants of several families, whom chance, neighbourhood, or business brought together, uniting into society, the need of a general whose conduct might defend them against their enemies in war, and the great confidence the innocence and sincerity of that poor but virtuous age — such as are almost all those which begin governments that ever come to last in the world — gave men of one another, made the first beginners of commonwealths generally put the rule into one man's hand, without any other express limitation or restraint but what the nature of the thing and the end of government required. Whichever of those it was that at first put the rule into the hands of a single person, certain it is that nobody was intrusted with it but for the public good and safety, and to those ends, in the infancies of commonwealths, those who had it commonly used it. And unless they had done so, young societies could not have subsisted; without such nursing fathers, tender and careful of the public weal, all governments

would have sunk under the weakness and infirmities of their infancy, and the prince and the people had soon perished together.

III. But though the golden age—before vain ambition and *amor sceleratus habendi*, evil concupiscence, had corrupted men's minds into a mistake of true power and honour—had more virtue and, consequently, better governors, as well as less vicious subjects; and there was then no stretching prerogative on the one side to oppress the people, nor, consequently, on the other, any dispute about privilege to lessen or restrain the power of the magistrate, and so no contest betwixt rulers and people about governors or government; yet, when ambition and luxury in future ages⁶ would retain and increase the power, without doing the business for which it was given, and, aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully the original and rights of government, and to find out ways to restrain the exorbitancies and prevent the abuses of that power which, they having entrusted in another's hands only for their own good, they found was made use of to hurt them.

III.2. Thus we may see how probable it is that people that were naturally free, and by their own consent either submitted to the government of their father or united together out of different families to make a government, should generally put the rule into one man's hands and choose to be under the conduct of a single person, without so much as by express conditions limiting or regulating his power which they thought safe enough in his honesty and prudence, though they never dreamed of monarchy being *jure divino*, which we never heard of among mankind till it was revealed to us by the divinity of this last age, nor ever allowed paternal power to have a right of dominion or to be the foundation of all government. And thus much may suffice to show that, as far as we have any light from history, we

⁶ "At first, when some certain kind of regiment was once approved, it may be nothing was then further thought upon for the manner of governing, but all permitted unto their wisdom and discretion, which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy did indeed but increase the sore which it should have cured. They saw that to live by one man's will became the cause of all men's misery. This constrained them to come unto laws wherein all men might see their duty beforehand, and know the penalties of transgressing them" (Hooker's *Eccles. Pol.* l. i. sect. 10).

have reason to conclude that all peaceful beginnings of government have been laid in the consent of the people. I say peaceful, because I shall have occasion in another place to speak of conquest, which some esteem a way of beginning of governments.

The other objection I find urged against the beginning of politics, in the way I have mentioned, is this:

113. That all men being born under government, some or other, it is impossible any of them should ever be free, and at liberty to unite together and begin a new one, or ever be able to erect a lawful government.

If this argument be good, I ask, how came so many lawful monarchies into the world? For if anybody, upon this supposition, can show me any one man in any age of the world free to begin a lawful monarchy, I will be bound to show him ten other free men at liberty at the same time to unite and begin a new government under a regal or any other form, it being demonstration that if any one, born under the dominion of another, may be so free as to have a right to command others in a new and distinct empire, every one that is born under the dominion of another may be so free, too, and may become a ruler or subject of a distinct separate government. And so, by this their own principle, either all men, however born, are free, or else there is but one lawful prince, one lawful government in the world. And then they have nothing to do but barely to show us which that is; which, when they have done, I doubt not but all mankind will easily agree to pay obedience to him.

114. Though it be a sufficient answer to their objection to show that it involves them in the same difficulties that it doth those they use it against, yet I shall endeavour to discover the weakness of this argument a little farther. "All men," say they, "are born under government, and therefore they cannot be at liberty to begin a new one. Everyone is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance." It is plain mankind never owned nor considered any such natural subjection that they were born in to one or to the other that tied them without their own consents to a subjection to them and their heirs.

115. For there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves and their obedience from the jurisdiction they were born under, and the family

or community they were bred up in, and setting up new governments in other places; from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied as long as there was room enough till the stronger or more fortunate swallowed the weaker, and those great ones again breaking to pieces dissolved into lesser dominions. All which are so many testimonies against paternal sovereignty, and plainly prove that it was not the natural right of the father descending to his heirs that made governments in the beginning, since it was impossible, upon that ground, there should have been so many little kingdoms; all must have been but only one universal monarchy if men had not been at liberty to separate themselves from their families and the government, be it what it will, that was set up in it, and go and make distinct commonwealths and other governments as they thought fit.

116. This has been the practice of the world from its first beginning to this day; nor is it now any more hindrance to the freedom of mankind that they are born under constituted and ancient politics that have established laws and set forms of government, than if they were born in the woods, amongst the unconfin'd inhabitants that run loose in them; for those who would persuade us that "by being born under any government we are naturally subjects to it" and have no more any title or pretence to the freedom of the state of nature, have no other reason — bating that of paternal power, which we have already answered — to produce for it but only because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government which they themselves submitted to. It is true that, whatever engagement or promises any one has made for himself, he is under the obligation of them, but cannot by any compact whatsoever bind his children or posterity; for his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son than it can of anybody else. He may indeed annex such conditions to the land he enjoyed as a subject of any commonwealth as may oblige his son to be of that community, if he will enjoy those possessions which were his father's, because that estate, being his father's property, he may dispose or settle it as he pleases.

117. And this has generally given the occasion to mistake in this matter; because commonwealths not permitting any part of their

dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father but under the same terms his father did, by becoming a member of the society; whereby he puts himself presently under the government he finds there established as much as any other subject of that commonwealth. And thus "the consent of freemen, born under government, which only makes them members of it," being given separately in their turns, as each comes to be of age, and not in a multitude together, people take no notice of it and, thinking it not done at all, or not necessary, conclude they are naturally subjects as they are men.

118. But, it is plain, governments themselves understand it otherwise; they claim no power over the son because of that they had over the father; nor look on children as being their subjects, by their father's being so. If a subject of England have a child by an English woman in France, whose subject is he? Not the King of England's, for he must have leave to be admitted to the privileges of it; nor the King of France's, for how then has his father a liberty to bring him away, and breed him as he pleases? And whoever was judged as a traitor or deserter, if he left or warred against a country, for being barely born in it of parents that were aliens there? It is plain, then, by the practice of governments themselves as well as by the law of right reason, that "a child is born a subject of no country or government." He is under his father's tuition and authority till he comes to age of discretion; and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to; for if an Englishman's son, born in France, be at liberty, and may do so, it is evident there is no tie upon him by his father's being a subject of this kingdom, nor is he bound up by any compact of his ancestors. And why then hath not his son, by the same reason, the same liberty though he be born anywhere else? Since the power that a father hath naturally over his children is the same wherever they be born, and the ties of natural obligations are not bounded by the positive limits of kingdoms and commonwealths.

119. Every man being, as has been shown, naturally free, and nothing being able to put him into subjection to any earthly power but only his own consent, it is to be considered what shall be understood to be a sufficient declaration of a man's consent to make him

subject to the laws of any government. There is a common distinction of an express and a tacit consent which will concern our present case. Nobody doubts but an express consent of any man entering into any society makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, — *i. e.*, how far any one shall be looked upon to have consented and thereby submitted to any government, where he has made no expressions of it at all. And to this I say that every man that hath any possessions or enjoyment of any part of the dominions of any government doth thereby give his tacit consent and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as anyone under it; whether this his possession be of land to him and his heirs for ever, or a lodging only for a week, or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of anyone within the territories of that government.

✓ 120. To understand this the better, it is fit to consider that every man, when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexes also, and submits to the community, those possessions which he has or shall acquire that do not already belong to any other government; for it would be a direct contradiction for any one to enter into society with others for the securing and regulating of property, and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government to which he himself, the proprietor of the land, is a subject. By the same act, therefore, whereby any one unites his person, which was before free, to any commonwealth, by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that commonwealth as long as it hath a being. Whoever, therefore, from thenceforth by inheritance, purchase, permission, or otherwise, enjoys any part of the land so annexed to, and under the government of that commonwealth, must take it with the condition it is under — that is, of submitting to the government of the commonwealth under whose jurisdiction it is as far forth as any subject of it.

121. But since the government has a direct jurisdiction only over the land, and reaches the possessor of it — before he has actually

incorporated himself in the society — only as he dwells upon and enjoys that, the obligation any one is under by virtue of such enjoyment, to submit to the government, begins and ends with the enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government, will, by donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth, or to agree with others to begin a new one *in vacuis locis*, in any part of the world they can find free and unpossessed. Whereas he that has once, by actual agreement and any express declaration, given his consent to be of any commonwealth is perpetually and indispensably obliged to be and remain unalterably a subject to it, and can never be again in the liberty of the state of nature, unless by any calamity the government he was under comes to be dissolved, or else by some public act cuts him off from being any longer a member of it.

122. But submitting to the laws of any country, living quietly and enjoying privileges and protection under them, makes not a man a member of that society; this is only a local protection and homage due to and from all those who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its laws extends. But this no more makes a man a member of that society, a perpetual subject of that commonwealth, than it would make a man a subject to another in whose family he found it convenient to abide for some time, though, whilst he continued in it, he were obliged to comply with the laws, and submit to the government he found there. And thus we see that foreigners, by living all their lives under another government and enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration as far forth as any denizen, yet do not thereby come to be subjects or members of that commonwealth. Nothing can make any man so but his actually entering into it by positive engagement and express promise and compact. This is that which I think concerning the beginning of political societies and that consent which makes any one a member of any commonwealth.

CHAPTER IX

OF THE ENDS OF POLITICAL SOCIETY AND GOVERNMENT

123. IF MAN in the state of nature be so free, as has been said, if he be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom, why will he give up his empire and subject himself to the dominion and control of any other power? To which it is obvious to answer that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit a condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties, and estates, which I call by the general name "property."

124. The great and chief end, therefore, of men's uniting into commonwealths and putting themselves under government is the preservation of their property. To which in the state of nature there are many things wanting:

First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong and the common measure to decide all controversies between them; for though the law of nature be plain and intelligible to all rational creatures, yet men, being biased by their interest as well as ignorant for want of studying it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

125. Secondly, In the state of nature there wants a known and indifferent judge with authority to determine all differences according to the established law; for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far and with too much heat in their own cases, as well as negligence and unconcernedness to make them too remiss in other men's

126. Thirdly, In the state of nature, there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offend will seldom fail, where they are able, by force, to make good their injustice; such resistance many times makes the punishment dangerous and frequently destructive to those who attempt it.

127. Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition while they remain in it, are quickly driven into society. Hence it comes to pass that we seldom find any number of men live any time together in this state. The inconveniences that they are therein exposed to by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others make them take sanctuary under the established laws of government and therein seek the preservation of their property. It is this makes them so willingly give up every one his single power of punishing, to be exercised by such alone as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original right of both the legislative and executive power, as well as of the governments and societies themselves.

128. For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers:

The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of nature, by which law, common to them all, he and all the rest of mankind are one community, make up one society, distinct from all other creatures. And, were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community and by positive agreements combine into smaller and divided associations.

The other power a man has in the state of nature is the power to punish the crimes committed against that law. Both these he gives up when he joins in a private, if I may so call it, or particular politic society and incorporates into any commonwealth separate from the rest of mankind.

129. The first power, viz., of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preserva-

tion of himself and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of nature.

130. Secondly, The power of punishing he wholly gives up, and engages his natural force — which he might before employ in the execution of the law of nature by his own single authority, as he thought fit — to assist the executive power of the society, as the law thereof shall require; for being now in a new state, wherein he is to enjoy many conveniences from the labour, assistance, and society of others in the same community as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary, but just, since the other members of the society do the like.

131. But though men when they enter into society give up the equality, liberty, and executive power they had in the state of nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, yet it being only with an intention in every one the better to preserve himself, his liberty and property — for no rational creature can be supposed to change his condition with an intention to be worse — the power of the society, or legislative constituted by them, can never be supposed to extend farther than the common good, but is obliged to secure every one's property by providing against those three defects above-mentioned that made the state of nature so unsafe and uneasy. And so whoever has the legislative or supreme power of any commonwealth is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to no other end but the peace, safety, and public good of the people.

CHAPTER X

OF THE FORMS OF A COMMONWEALTH

132. THE MAJORITY, having, as has been shown, upon men's first uniting into society, the whole power of the community naturally

in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing: and then the form of the government is a perfect democracy; or else may put the power of making laws into the hands of a few select men, and their heirs or successors: and then it is an oligarchy; or else into the hands of one man: and then it is a monarchy; if to him and his heirs: it is an hereditary monarchy; if to him only for life, but upon his death the power only of nominating a successor to return to them: an elective monarchy. And so accordingly of these the community may make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again — when it is so reverted, the community may dispose of it again anew into what hands they please and so constitute a new form of government. For the form of government depending upon the placing the supreme power, which is the legislative — it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws — according as the power of making laws is placed, such is the form of the commonwealth.

133. By commonwealth, I must be understood all along to mean, not a democracy or any form of government, but any independent community which the Latines signified by the word *civitas*, to which the word which best answers in our language is “commonwealth,” and most properly expresses such a society of men, which community or city in English does not, for there may be subordinate communities in government; and city amongst us has quite a different notion from commonwealth; and, therefore, to avoid ambiguity, I crave leave to use the word commonwealth in that sense in which I find it used by King James the First¹; and I take it to be its genuine signification; which if anybody dislike, I consent with him to change it for a better.

¹ [James I (the Sixth of Scotland), only child of Mary, Queen of Scots (1566–1625). Although brought up and trained by George Buchanan (1570–1578), James himself became one of the major defenders of the divine right theory of monarchy. Especially well-known is his *True Law of Free Monarchies* (1589). A convenient edition of his works on politics is *Political Works of James I.*, edited by C. H. McIlwain, Cambridge, 1918. (For Buchanan, cf. footnote No. 2, page 240).]

CHAPTER XI

OF THE EXTENT OF THE LEGISLATIVE POWER

134. THE GREAT end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power; as the first and fundamental natural law which is to govern even the legislative itself is the preservation of the society and, as far as will consist with the public good, of every person in it. This legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it; nor can any edict of anybody else, in what form soever conceived or by what power soever backed, have the force and obligation of a law which has not its sanction from that legislative which the public has chosen and appointed; for without this the law could not have that which is absolutely necessary to its being a law: the consent of the society over whom nobody can have a power to make laws, but by their own consent and by authority received from them.¹ And therefore all the obedience, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power and is directed by those laws which it enacts; nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his

¹ "The lawful power of making laws to command whole politic societies of men, belonging so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not by express commission immediately and personally received from God, or else by authority derived at the first from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which public approbation hath not made so." — Hooker's *Eccl. Pol.*, lib. i. sect. 10.

"Of this point, therefore, we are to note, that such men naturally have no full and perfect power to command whole politic multitudes of men, therefore utterly without our consent we could in such sort be at no man's commandment living. And to be commanded we do consent, when that society whereof we be a part hath at any time before consented, without revoking the same by the like universal agreement. Laws therefore human, of what kind soever, are available by consent" — *Ibid.*

obedience to the legislative acting pursuant to their trust, nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being ridiculous to imagine one can be tied ultimately to obey any power in the society which is not supreme.

135. Though the legislative, whether placed in one or more, whether it be always in being, or only by intervals, though it be the supreme power in every commonwealth; yet:

First, It is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people; for it being but the joint power of every member of the society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of nature before they entered into society and gave up to the community; for nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself and the rest of mankind, this is all he doth or can give up to the commonwealth, and by it to the legislative power, so that the legislative can have no more than this. Their power, in the utmost bounds of it, is limited to the public good of the society. It is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects.³ The obligations of the law of nature cease not in society but only in many cases are drawn closer and have by human laws

³ "Two foundations there are which bear up public societies; the one a natural inclination whereby all men desire sociable life and fellowship; the other an order, expressly or secretly agreed upon, touching the manner of their union in living together. The latter is that which we call the law of a commonweal, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth. Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions that they be no hindrance unto the common good, for which societies are instituted. Unless they do this, they are not perfect." — Hooker's *Ecccl. Pol.*, lib i. sect. 10.

known penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of nature — i. e., to the will of God, of which that is a declaration — and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it.

136. Secondly, The legislative or supreme authority cannot assume to itself a power to rule by extemporary, arbitrary decrees, but is bound to dispense justice and to decide the rights of the subject by promulgated, standing laws, and known authorized judges.³ For the law of nature being unwritten, and so nowhere to be found but in the minds of men, they who through passion or interest shall miscite or misapply it, cannot so easily be convinced of their mistake where there is no established judge; and so it serves not, as it ought, to determine the rights and fence the properties of those that live under it, especially where every one is judge, interpreter, and executioner of it, too, and that in his own case; and he that has right on his side, having ordinarily but his own single strength, hath not force enough to defend himself from injuries, or to punish delinquents. To avoid these inconveniences which disorder men's properties in the state of nature, men unite into societies that they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it by which every one may know what is his. To this end it is that men give up all their natural power to the society which they enter into, and the community put the legislative power into such hands as they think fit with this trust, that they shall be governed by declared laws, or else their peace, quiet, and property will still be at the same uncertainty as it was in the state of nature.

137. Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and

³ "Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two, the law of God, and the law of nature; so that laws human must be made according to the general laws of nature, and without contradiction to any positive law of Scripture, otherwise they are ill-made." — Hooker's *Ecc. Pol.* lib. iii. sect. 9.

"To constrain men to anything inconvenient doth seem unreasonable." — *Ibid.* lib. i. sect. 2.

government which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties, and fortunes, and by stated rules of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power so to do, to give to any one or more an absolute arbitrary power over their persons and estates and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature wherein they had a liberty to defend their right against the injuries of others and were upon equal terms of force to maintain it, whether invaded by a single man or many in combination. Whereas, by supposing they have given up themselves to the absolute arbitrary power and will of a legislator, they have disarmed themselves and armed him to make a prey of them when he pleases, he being in a much worse condition who is exposed to the arbitrary power of one man who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men, nobody being secure that his will, who has such a command, is better than that of other men, though his force be 100,000 times stronger. And, therefore, whatever form the commonwealth is under, the ruling power ought to govern by declared and received laws and not by extemporary dictates and undetermined resolutions; for then mankind will be in a far worse condition than in the state of nature if they shall have armed one or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts or unrestrained and, till that moment, unknown wills, without having any measures set down which may guide and justify their actions. For all the power the government has, being only for the good of the society, as it ought not to be arbitrary and at pleasure, so it ought to be exercised by established and promulgated laws; that both the people may know their duty and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted by the power they have in their hands to employ it to such purposes and by such measures as they would not have known, and own not willingly.

138. Thirdly, The supreme power cannot take from any man part of his property without his own consent; for the preservation of property being the end of government and that for which men enter

into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that, by entering into society, which was the end for which they entered into it — too gross an absurdity for any man to own. Men, therefore, in society having property, they have such right to the goods which by the law of the community are theirs, that nobody hath a right to take their substance or any part of it from them without their own consent; without this, they have no property at all, for I have truly no property in that which another can by right take from me when he pleases, against my consent. Hence it is a mistake to think that the supreme or legislative power of any commonwealth can do what it will, and dispose of the estates of the subject arbitrarily, or take any part of them at pleasure. This is not much to be feared in governments where the legislative consists, wholly or in part, in assemblies which are variable, whose members, upon the dissolution of the assembly, are subjects under the common laws of their country, equally with the rest. But in governments where the legislative is in one lasting assembly, always in being, or in one man, as in absolute monarchies, there is danger still that they will think themselves to have a distinct interest from the rest of the community, and so will be apt to increase their own riches and power by taking what they think fit from the people; for a man's property is not at all secure, though there be good and equitable laws to set the bounds of it between him and his fellow subjects, if he who commands those subjects have power to take from any private man what part he pleases of his property and use and dispose of it as he thinks good.

139. But government, into whatsoever hands it is put, being, as I have before shown, entrusted with this condition, and for this end, that men might have and secure their properties, the prince, or senate, however it may have power to make laws for the regulating of property between the subjects one amongst another, yet can never have a power to take to themselves the whole or any part of the subject's property without their own consent; for this would be in effect to leave them no property at all. And to let us see that even absolute power, where it is necessary, is not arbitrary by being absolute, but is still limited by that reason and confined to those ends which required it in some cases to be absolute, we need look no farther than the common practice of martial discipline; for the preservation of the

army, and in it of the whole commonwealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see that neither the sergeant, that could command a soldier to march up to the mouth of a cannon or stand in a breach where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the general, that can condemn him to death for deserting his post, or for not obeying the most desperate orders, can yet, with all his absolute power of life and death, dispose of one farthing of that soldier's estate or seize one jot of his goods, whom yet he can command anything, and hang for the least disobedience. Because such a blind obedience is necessary to that end for which the commander has his power, viz., the preservation of the rest; but the disposing of his goods has nothing to do with it.

140. It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent — *i. e.*, the consent of the majority, giving it either by themselves or their representatives chosen by them. For if any one shall claim a power to lay and levy taxes on the people, by his own authority and without such consent of the people, he thereby invades the fundamental law of property and subverts the end of government, for what property have I in that which another may by right take, when he pleases, to himself?

141. Fourthly, The legislative cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislative and appointing in whose hands that shall be. And when the people have said, we will submit to rules and be governed by laws made by such men, and in such forms, nobody else can say other men shall make laws for them; nor can the people be bound by any laws but such as are enacted by those whom they have chosen and authorized to make laws for them. The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws and place it in other hands.

142. These are the bounds which the trust that is put in them by the society and the law of God and nature have set to the legislative power of every commonwealth, in all forms of government:

First, They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court and the countryman at plough.

Secondly, These laws also ought to be designed for no other end ultimately but the good of the people.

Thirdly, They must not raise taxes on the property of the people without the consent of the people, given by themselves or their deputies. And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies to be from time to time chosen by themselves.

Fourthly, The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.

CHAPTER XII

OF THE LEGISLATIVE, EXECUTIVE, AND FEDERATIVE POWER OF THE COMMONWEALTH

143. THE LEGISLATIVE power is that which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it. But because those laws which are constantly to be executed, and whose force is always to continue, may be made in a little time, therefore there is no need that the legislative should be always in being, not having always business to do. And because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage, and thereby come to have a distinct interest from

the rest of the community contrary to the end of society and government; therefore, in well ordered commonwealths, where the good of the whole is so considered as it ought, the legislative power is put into the hands of divers persons who, duly assembled, have by themselves, or jointly with others, a power to make laws; which when they have done, being separated again, they are themselves subject to the laws they have made, which is a new and near tie upon them to take care that they make them for the public good.

144. But because the laws that are at once and in a short time made have a constant and lasting force and need a perpetual execution or an attendance thereunto; therefore, it is necessary there should be a power always in being which should see to the execution of the laws that are made and remain in force. And thus the legislative and executive power come often to be separated.

145. There is another power in every commonwealth which one may call natural, because it is that which answers to the power every man naturally had before he entered into society; for though in a commonwealth the members of it are distinct persons still in reference to one another, and as such are governed by the laws of the society, yet, in reference to the rest of mankind, they make one body which is, as every member of it before was, still in the state of nature with the rest of mankind. Hence it is that the controversies that happen between any man of the society with those that are out of it are managed by the public, and an injury done to a member of their body engages the whole in the reparation of it. So that, under this consideration, the whole community is one body in the state of nature in respect of all other states or persons out of its community.

146. This, therefore, contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth, and may be called "federative," if anyone pleases. So the thing be understood, I am indifferent as to the name.

147. These two powers, executive and federative, though they be really distinct in themselves, yet one comprehending the execution of the municipal laws of the society within itself upon all that are parts of it, the other the management of the security and interest of the public without, with all those that it may receive benefit or damage from, yet they are always almost united. And though this federative

power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws than the executive, and so must necessarily be left to the prudence and wisdom of those whose hands it is in to be managed for the public good; for the laws that concern subjects one amongst another, being to direct their actions, may well enough precede them. But what is to be done in reference to foreigners, depending much upon their actions and the variation of designs and interests, must be left in great part to the prudence of those who have this power committed to them, to be managed by the best of their skill for the advantage of the commonwealth.

148. Though, as I said, the executive and federative power of every community be really distinct in themselves, yet they are hardly to be separated and placed at the same time in the hands of distinct persons; for both of them requiring the force of the society for their exercise, it is almost impracticable to place the force of the commonwealth in distinct and not subordinate hands, or that the executive and federative power should be placed in persons that might act separately, whereby the force of the public would be under different commands, which would be apt some time or other to cause disorder and ruin.

CHAPTER XIII

OF THE SUBORDINATION OF THE POWERS OF THE COMMONWEALTH

149. THOUGH in a constituted commonwealth, standing upon its own basis and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power which is the legislative, to which all the rest are and must be subordinate, yet, the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative when they find the legislative act contrary to the trust reposed in them; for all power given with trust for the attaining an end being limited by that end, whenever that end is manifestly neglected or opposed, the trust must necessarily be

forfeited and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject; for no man or society of men having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another, whenever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve what they have not a power to part with, and to rid themselves of those who invade this fundamental, sacred, and unalterable law of self-preservation for which they entered into society. And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.

150. In all cases, whilst the government subsists, the legislative is the supreme power; for what can give laws to another must needs be superior to him; and since the legislative is no otherwise legislative of the society but by the right it has to make laws for all the parts and for every member of the society, prescribing rules to their actions, and giving power of execution where they are transgressed, the legislative must needs be the supreme, and all other powers in any members or parts of the society derived from and subordinate to it.

151. In some commonwealths where the legislative is not always in being, and the executive is vested in a single person who has also a share in the legislative, there that single person in a very tolerable sense may also be called supreme; not that he has in himself all the supreme power which is that of lawmaking, but because he has in him the supreme execution from whom all inferior magistrates derive all their several subordinate powers, or at least the greatest part of them. Having also no legislative superior to him, there being no law to be made without his consent which cannot be expected should ever subject him to the other part of the legislative, he is properly enough, in this sense, supreme. But yet it is to be observed that though oaths of allegiance and fealty are taken to him, it is not to him as supreme legislator, but as supreme executor of the law, made by a joint power

of him with others; allegiance being nothing but an obedience according to law which, when he violates, he has no right to obedience nor can claim it otherwise than as the public person invested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of the society, declared in its laws, and thus he has no will, no power, but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself and is but a single private person without power and without will that has no right to obedience — the members owing no obedience but to the public will of the society.

152. The executive power, placed anywhere but in a person that has also a share in the legislative, is visibly subordinate and accountable to it and may be, at pleasure changed and displaced, so that it is not the supreme executive power that is exempt from subordination, but the supreme executive power vested in one who, having a share in the legislative, has no distinct superior legislative to be subordinate and accountable to, farther than he himself shall join and consent; so that he is no more subordinate than he himself shall think fit, which one may certainly conclude will be but very little. Of other ministerial and subordinate powers in a commonwealth we need not speak, they being so multiplied with infinite variety in the different customs and constitutions of distinct commonwealths that it is impossible to give a particular account of them all. Only thus much, which is necessary to our present purpose, we may take notice of concerning them, that they have no manner of authority, any of them, beyond what is by positive grant and commission delegated to them, and are all of them accountable to some other power in the commonwealth.

153. It is not necessary, no, nor so much as convenient, that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not always need of new laws to be made but always need of execution of the laws that are made. When the legislative hath put the execution of the laws they make into other hands, they have a power still to resume it out of those hands, when they find cause, and to punish for any maladministration against the laws. The same holds also in regard of the federative power, that and the executive being both ministerial and subor-

dinate to the legislative which, as has been shown, in a constituted commonwealth is the supreme. The legislative also in this case being supposed to consist of several persons — for if it be a single person, it cannot but be always in being, and so will, as supreme, naturally have the supreme executive power, together with the legislative — may assemble and exercise their legislature at the times that either their original constitution or their own adjournment appoints, or when they please, if neither of these hath appointed any time, or there be no other way prescribed to convoke them. For the supreme power being placed in them by the people, it is always in them, and they may exercise it when they please, unless by their original constitution they are limited to certain seasons, or by an act of their supreme power they have adjourned to a certain time; and when that time comes, they have a right to assemble and act again.

154. If the legislative, or any part of it, be made up of representatives chosen for that time by the people, which afterwards return into the ordinary state of subjects and have no share in the legislature but upon a new choice, this power of choosing must also be exercised by the people, either at certain appointed seasons, or else when they are summoned to it; and in this latter case the power of convoking the legislative is ordinarily placed in the executive, and has one of these two limitations in respect of time: that either the original constitution requires their assembling and acting at certain intervals, and then the executive power does nothing but ministerially issue directions for their electing and assembling according to due forms; or else it is left to his prudence to call them by new elections, when the occasions or exigencies of the public require the amendment of old or making of new laws, or the redress or prevention of any inconveniences that lie on or threaten the people.

155. It may be demanded here, what if the executive power, being possessed of the force of the commonwealth, shall make use of that force to hinder the meeting and acting of the legislative, when the original constitution or the public exigencies require it? I say using force upon the people without authority, and contrary to the trust put in him that does so, is a state of war with the people who have a right to reinstate their legislative in the exercise of their power; for having erected a legislative with an intent they should exercise the power of making laws, either at certain set times or when there is

need of it, when they are 'hindered by any force from what is so necessary to the society, and wherein the safety and preservation of the people consists, the people have a right to remove it by force. In all states and conditions, the true remedy of force without authority is to oppose force to it. The use of force without authority always puts him that uses it into a state of war, as the aggressor, and renders him liable to be treated accordingly.

156. The power of assembling and dismissing the legislative, placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him for the safety of the people, in a case where the uncertainty and variableness of human affairs could not bear a steady fixed rule; for it not being possible that the first framers of the government should, by any foresight, be so much masters of future events as to be able to prefix so just periods of return and duration to the assemblies of the legislative, in all times to come, that might exactly answer all the exigencies of the commonwealth, the best remedy could be found for this defect was to trust this to the prudence of one who was always to be present and whose business it was to watch over the public good. Constant, frequent meetings of the legislative, and long continuations of their assemblies without necessary occasion, could not but be burdensome to the people and must necessarily in time produce more dangerous inconveniences, and yet the quick turn of affairs might be sometimes such as to need their present help. Any delay of their convening might endanger the public; and sometimes, too, their business might be so great that the limited time of their sitting might be too short for their work, and rob the public of that benefit which could be had only from their mature deliberation. What then could be done in this case to prevent the community from being exposed some time or other to eminent hazard, on one side or the other, by fixed intervals and periods set to the meeting and acting of the legislative, but to entrust it to the prudence of some who, being present and acquainted with the state of public affairs, might make use of this prerogative for the public good? And where else could this be so well placed as in his hands who was entrusted with the execution of the laws for the same end? Thus supposing the regulation of times for the assembling and sitting of the legislative not settled by the original constitution, it naturally fell into the hands of the executive, not as an arbitrary

power depending on his good pleasure but with this trust always to have it exercised only for the public weal, as the occurrences of times and change of affairs might require. Whether settled periods of their convening, or a liberty left to the prince for convoking the legislative, or perhaps a mixture of both, hath the least inconvenience attending it, it is not my business here to inquire; but only to show that though the executive power may have the prerogative of convoking and dissolving such conventions of the legislative, yet it is not thereby superior to it.

157. Things of this world are in so constant a flux that nothing remains long in the same state. Thus people, riches, trade, power, change their stations, flourishing mighty cities come to ruin and prove in time neglected, desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges when the reasons of them are ceased, it often comes to pass that in governments where part of the legislative consists of representatives chosen by the people, that in tract of time this representation becomes very unequal and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom when reason has left it may lead, we may be satisfied when we see the bare name of a town of which there remains not so much as the ruins, where scarce so much housing as a sheepcote or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of lawmakers as a whole county numerous in people and powerful in riches. This strangers stand amazed at, and everyone must confess needs a remedy; though most think it hard to find one, because the constitution of the legislative being the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people, no inferior power can alter it. And, therefore, the people, when the legislative is once constituted, having in such a government as we have been speaking of no power to act as long as the government stands, this inconvenience is thought incapable of a remedy.

158. *Salus populi suprema lex* is certainly so just and fundamental a rule that he who sincerely follows it cannot dangerously err. If, therefore, the executive, who has the power of convoking the legislative, observing rather the true proportion than fashion of representa-

tion, regulates not by old custom but true reason the number of members in all places that have a right to be distinctly represented — which no part of the people, however incorporated, can pretend to but in proportion to the assistance which it affords to the public — it cannot be judged to have set up a new legislative but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced. For it being the interest as well as intention of the people to have a fair and equal representative, whoever brings it nearest to that is an undoubted friend to, and establisher of the government and cannot miss the consent and approbation of the community. Prerogative being nothing but a power in the hands of the prince to provide for the public good in such cases which, depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct, whatsoever shall be done manifestly for the good of the people, and the establishing the government upon its true foundations, is, and always will be, just prerogative. The power of erecting new corporations, and therewith new representatives, carries with it a supposition that in time the measures of representation might vary, and those places have a just right to be represented which before had none; and by the same reason those cease to have a right and be too inconsiderable for such a privilege, which before had it. It is not a change from the present state, which perhaps corruption or decay has introduced, that makes an inroad upon the government, but the tendency of it to injure or oppress the people, and to set up one part or party with a distinction from, and an unequal subjection of, the rest. Whatsoever cannot but be acknowledged to be of advantage to the society and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall choose their representatives upon just and undeniably equal measures, suitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do.

CHAPTER XIV

OF PREROGATIVE ¹

159. WHERE the legislative and executive power are in distinct hands — as they are in all moderated monarchies and well-framed governments — there the good of the society requires that several things should be left to the discretion of him that has the executive power; for the legislators not being able to foresee and provide by laws for all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of nature a right to make use of it for the good of the society, in many cases where the municipal law has given no direction, till the legislative can conveniently be assembled to provide for it. Many things there are which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require; nay, it is fit that the laws themselves should in some cases give way to the executive power, or rather to this fundamental law of nature and government, viz., that, as much as may be, all the members of the society are to be preserved; for since many accidents may happen wherein a strict and rigid observation of the laws may do harm — as not to pull down an innocent man's house to stop the fire when the next to it is burning — and a man may come sometimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon, it is fit the ruler should have a power in many cases to mitigate the severity of the law and pardon some offenders; for the end of government being the preservation of all as much as may be, even the guilty are to be spared where it can prove no prejudice to the innocent.

¹[The power of prerogative was the personal power in the running of the state possessed by the monarch. It was executive power to be employed at his discretion. In England this power had originally been the major power in government. The Civil War struggle occurred largely on the basis of objections to its arbitrary use, and what was held to be its improper extension as against the rightful claims of Parliament. Prerogative and its exercise, not less than parliamentary legislation, was responsible for colonial grievances. With the development of cabinet government and cabinet responsibility in England, the prerogative power was exercised under the direction of ministers responsible to Parliament.]

160. This power to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called "prerogative"; for since in some governments the lawmaking power is not always in being, and is usually too numerous and so too slow for the dispatch requisite to execution, and because also it is impossible to foresee, and so by laws to provide for all accidents and necessities that may concern the public, or to make such laws as will do no harm if they are executed with an inflexible rigour on all occasions and upon all persons that may come in their way, therefore there is a latitude left to the executive power to do many things of choice which the laws do not prescribe.

161. This power, whilst employed for the benefit of the community and suitably to the trust and ends of the government, is undoubted prerogative, and never is questioned; for the people are very seldom or never scrupulous or nice in the point; they are far from examining prerogative whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people and not manifestly against it. But if there comes to be a question between the executive power and the people about a thing claimed as a prerogative, the tendency of the exercise of such prerogative to the good or hurt of the people will easily decide that question.

162. It is easy to conceive that in the infancy of governments, when commonwealths differed little from families in number of people, they differed from them too but little in number of laws; and the governors, being as the fathers of them, watching over them for their good, the government was almost all prerogative. A few established laws served the turn, and the discretion and care of the ruler supplied the rest. But when mistake or flattery prevailed with weak princes to make use of this power for private ends of their own and not for the public good, the people were fain by express laws to get prerogative determined in those points wherein they found disadvantage from it; and thus declared limitations of prerogative were by the people found necessary in cases which they and their ancestors had left in the utmost latitude to the wisdom of those princes who made no other but a right use of it, that is, for the good of their people.

163. And therefore they have a very wrong notion of government who say that the people have encroached upon the prerogative when they have got any part of it to be defined by positive laws; for in so

doing they have not pulled from the prince anything that of right belonged to him, but only declare that that power which they indefinitely left in his or his ancestors hands to be exercised for their good was not a thing which they intended him when he used it otherwise. For the end of government being the good of the community, whatsoever alterations are made in it tending to that end cannot be an encroachment upon anybody, since nobody in government can have a right tending to any other end; and those only are encroachments which prejudice or hinder the public good. Those who say otherwise speak as if the prince had a distinct and separate interest from the good of the community and was not made for it — the root and source from which spring almost all those evils and disorders which happen in kingly governments. And, indeed, if that be so, the people under his government are not a society of rational creatures entered into a community for their mutual good, they are not such as have set rulers over themselves to guard and promote that good; but are to be looked on as a herd of inferior creatures under the dominion of a master who keeps them and works them for his own pleasure or profit. If men were so void of reason and brutish as to enter into society upon such terms, prerogative might indeed be what some men would have it: an arbitrary power to do things hurtful to the people.

164. But since a rational creature cannot be supposed, when free, to put himself into subjection to another for his own harm — though, where he finds a good and wise ruler, he may not perhaps think it either necessary or useful to set precise bounds to his power in all things — prerogative can be nothing but the people's permitting their rulers to do several things of their own free choice where the law was silent, and sometimes, too, against the direct letter of the law, for the public good, and their acquiescing in it when so done. For as a good prince who is mindful of the trust put into his hands and careful of the good of his people cannot have too much prerogative, that is, power to do good, so a weak and ill prince, who would claim that power which his predecessors exercised without the direction of the law as a prerogative belonging to him by right of his office, which he may exercise at his pleasure to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right, and limit that power which, whilst it was exercised for their good, they were content should be tacitly allowed.

165. And, therefore, he that will look into the history of England will find that prerogative was always largest in the hands of our wisest and best princes, because the people, observing the whole tendency of their actions to be the public good, contested not what was done without law to that end, or, if any human frailty or mistake — for princes are but men, made as others — appeared in some small declinations from that end, yet it was visible the main of their conduct tended to nothing but the care of the public. The people, therefore, finding reason to be satisfied with these princes whenever they acted without or contrary to the letter of the law, acquiesced in what they did, and without the least complaint let them enlarge their prerogative as they pleased, judging rightly that they did nothing herein to the prejudice of their laws since they acted conformably to the foundation and end of all laws — the public good.

166. Such godlike princes, indeed, had some title to arbitrary power by that argument that would prove absolute monarchy the best government, as that which God himself governs the universe by, because such kings partook of his wisdom and goodness. Upon this is founded that saying that the reigns of good princes have been always most dangerous to the liberties of their people; for when their successors, managing the government with different thoughts, would draw the actions of those good rulers into precedent and make them the standard of their prerogative, as if what had been done only for the good of the people was a right in them to do for the harm of the people if they so pleased, it has often occasioned contest, and sometimes public disorders, before the people could recover their original right and get that to be declared not to be prerogative which truly was never so, since it is impossible that anybody in the society should ever have a right to do the people harm, though it be very possible and reasonable that the people should not go about to set any bounds to the prerogative of those kings or rulers who themselves transgressed not the bounds of the public good; for *prerogative is nothing but the power of doing public good without a rule.*

167. The power of calling parliaments in England, as to precise time, place, and duration, is certainly a prerogative of the king, but still with this trust that it shall be made use of for the good of the nation, as the exigencies of the times and variety of occasions shall require; for it being impossible to foresee which should always be the

fittest place for them to assemble in, and what the best season, the choice of these was left with the executive power, as might be most subservient to the public good, and best suit the ends of parliaments.

168. The old question will be asked in this matter of prerogative: But who shall be judge when this power is made a right use of? I answer: Between an executive power in being with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth; as there can be none between the legislative and the people, should either the executive or the legislative when they have got the power in their hands design or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to heaven; for the rulers, in such attempts, exercising a power the people never put into their hands — who can never be supposed to consent that anybody should rule over them for their harm — do that which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right and have no appeal on earth, then they have a liberty to appeal to heaven whenever they judge the cause of sufficient moment. And, therefore, though the people cannot be judge so as to have by the constitution of that society any superior power to determine and give effective sentence in the case, yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth — viz., to judge whether they have just cause to make their appeal to heaven. And this judgment they cannot part with, it being out of a man's power so to submit himself to another as to give him a liberty to destroy him, God and nature never allowing a man so to abandon himself as to neglect his own preservation; and since he cannot take away his own life, neither can he give another power to take it. Nor let any one think this lays a perpetual foundation for disorder; for this operates not till the inconvenience is so great that the majority feel it and are weary of it and find a necessity to have it amended. But this the executive power, or wise princes, never need come in the danger of; and it is the thing, of all others, they have most need to avoid, as of all others the most perilous.

CHAPTER XV

OF PATERNAL, POLITICAL, AND DESPOTICAL POWER
CONSIDERED TOGETHER

169. THOUGH I have had occasion to speak of these separately before, yet the great mistakes of late about government having, as I suppose, arisen from confounding these distinct powers one with another, it may not, perhaps, be amiss to consider them here together.

170. First, then, paternal or parental power is nothing but that which parents have over their children to govern them for the children's good till they come to the use of reason or a state of knowledge wherein they may be supposed capable to understand that rule, whether it be the law of nature or the municipal law of their country, they are to govern themselves by — capable, I say, to know it as well as several others who live as freemen under that law. The affection and tenderness which God hath planted in the breast of parents towards their children makes it evident that this is not intended to be a severe arbitrary government, but only for the help, instruction, and preservation of their offspring. But happen it as it will, there is, as I have proved, no reason why it should be thought to extend to life and death at any time over their children more than over anybody else; neither can there be any pretence why this parental power should keep the child, when grown to a man, in subjection to the will of his parents any farther than having received life and education from his parents obliges him to respect, honour, gratitude, assistance, and support all his life to both father and mother. And thus, it is true, the paternal is a natural government, but not at all extending itself to the ends and jurisdictions of that which is political. The power of the father doth not reach at all to the property of the child, which is only in his own disposing.

171. Secondly, Political power is that power which every man having in the state of nature has given up into the hands of the society and therein to the governors whom the society hath set over itself, with this express or tacit trust that it shall be employed for their good and the preservation of their property. Now this power which every man has in the state of nature, and which he parts with to the

society in all such cases where the society can secure him, is to use such means for the preserving of his own property as he thinks good and nature allows him, and to punish the breach of the law of nature in others so as, according to the best of his reason, may most conduce to the preservation of himself and the rest of mankind. So that the end and measure of this power, when in every man's hands in the state of nature, being the preservation of all of his society — that is, all mankind in general — it can have no other end or measure when in the hands of the magistrate but to preserve the members of that society in their lives, liberties, and possessions; and so cannot be an absolute arbitrary power over their lives and fortunes, which are as much as possible to be preserved, but a power to make laws, and annex such penalties to them as may tend to the preservation of the whole, by cutting off those parts, and those only, which are so corrupt that they threaten the sound and healthy, without which no society is lawful. And this power has its original only from compact and agreement, and the mutual consent of those who make up the community.

172. Thirdly, Despotical power is an absolute, arbitrary power one man has over another to take away his life whenever he pleases. This is a power which neither nature gives — for it has made no such distinction between one man and another — nor compact can convey; for man, not having such an arbitrary power over his own life, cannot give another man such a power over it; but it is the effect only of forfeiture which the aggressor makes of his own life when he puts himself into the state of war with another. For having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society; and having renounced the way of peace which that teaches, and made use of the force of war to compass his unjust ends upon another where he has no right; and so revolting from his own kind to that of beasts by making force, which is theirs, to be his rule of right; he renders himself liable to be destroyed by the injured person and the rest of mankind that will join with him in the execution of justice, as any other wild beast or noxious brute with whom mankind can have neither society nor security. And thus captives, taken in a just and lawful war, and such only, are subject to a despotical power, which, as it arises not from compact, so neither is it capable of any,

but is the state of war continued; for what compact can be made with a man that is not master of his own life? What condition can he perform? And if he be once allowed to be master of his own life, the despotical arbitrary power of his master ceases. He that is master of himself and his own life has a right, too, to the means of preserving it; so that, as soon as compact enters, slavery ceases, and he so far quits his absolute power and puts an end to the state of war who enters into conditions with his captive.

173. Nature gives the first of these, viz., paternal power, to parents for the benefit of their children during their minority, to supply their want of ability and understanding how to manage their property. By property I must be understood here, as in other places, to mean that property which men have in their persons as well as goods. Voluntary agreement gives the second, viz., political power, to governors for the benefit of their subjects, to secure them in the possession and use of their properties. And forfeiture gives the third despotical power to lords, for their own benefit, over those who are stripped of all property.

174. He that shall consider the distinct rise and extent, and the different ends of these several powers, will plainly see that paternal power comes as far short of that of the magistrate as despotical exceeds it; and that absolute dominion, however placed, is so far from being one kind of civil society that it is as inconsistent with it as slavery is with property. Paternal power is only where minority makes the child incapable to manage his property; political, where men have property in their own disposal; and despotical, over such as have no property at all.

CHAPTER XVI

OF CONQUEST

175. **THOUGH** governments can originally have no other rise than that before-mentioned, nor politics be founded on anything but the consent of the people, yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great

a part of the history of mankind, this consent is little taken notice of; and therefore many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government. But conquest is as far from setting up any government as demolishing an house is from building a new one in the place. Indeed, it often makes way for a new frame of a commonwealth by destroying the former, but, without the consent of the people, can never erect a new one.

176. That the aggressor who puts himself into the state of war with another and unjustly invades another man's right can, by such an unjust war, never come to have a right over the conquered, will be easily agreed by all men who will not think that robbers and pirates have a right of empire over whomsoever they have force enough to master, or that men are bound by promises which unlawful force extorts from them. Should a robber break into my house, and with a dagger at my throat make me seal deeds to convey my estate to him, would this give him any title? Just such a title, by his sword, has an unjust conqueror who forces me into submission. The injury and the crime are equal, whether committed by the wearer of the crown or some petty villain. The title of the offender and the number of his followers make no difference in the offence, unless it be to aggravate it. The only difference is, great robbers punish little ones to keep them in their obedience, but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession which should punish offenders. What is my remedy against a robber that so broke into my house? Appeal to the law for justice. But perhaps justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it. If God has taken away all means of seeking remedy, there is nothing left but patience. But my son, when able, may seek the relief of the law which I am denied; he or his son may renew his appeal till he recover his right. But the conquered, or their children, have no court, no arbitrator on earth to appeal to. Then they may appeal, as Jephthah did, to heaven, and repeat their appeal till they have recovered the native right of their ancestors, which was to have such a legislative over them as the majority should approve and freely acquiesce in. If it be objected this would cause endless trouble, I answer, no more than justice does, where she lies

open to all that appeal to her. He that troubles his neighbour without a cause is punished for it by the justice of the court he appeals to; and he that appeals to heaven must be sure he has right on his side, and a right, too, that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived and will be sure to retribute to every one according to the mischiefs he hath created to his fellow subjects, that is, any part of mankind. From whence it is plain that he that conquers in an unjust war can thereby have no title to the subjection and obedience of the conquered.

177. But supposing victory favours the right side, let us consider a conqueror in a lawful war, and see what power he gets, and over whom.

First, It is plain he gets no power by his conquest over those that conquered with him. They that fought on his side cannot suffer by the conquest, but must at least be as much freemen as they were before. And most commonly they serve upon terms and on conditions to share with their leader and enjoy a part of the spoil and other advantages that attended the conquering sword, or at least have a part of the subdued country bestowed upon them. And the conquering people are not, I hope, to be slaves by conquest, and wear their laurels only to show they are sacrifices to their leader's triumph. They that found absolute monarchy upon the title of the sword make their heroes, who are the founders of such monarchies, arrant Diawcansis, and forget they had any officers and soldiers that fought on their side in the battles they won, or assisted them in the subduing, or shared in possessing, the countries they mastered. We are told by some that the English monarchy is founded in the Norman conquest and that our princes have thereby a title to absolute dominion; which, if it were true — as by the history it appears otherwise — and that William had a right to make war on this island, yet his dominion by conquest could reach no farther than to the Saxons and Britons that were then inhabitants of this country. The Normans that came with him and helped to conquer, and all descended from them, are freemen and no subjects by conquest; let that give what dominion it will. And if I, or anybody else, shall claim freedom as derived from them, it will be very hard to prove the contrary; and, it is plain, the law that has made no distinction between the one and the other intends

not there should be any difference in their freedom or privileges.¹

178. But supposing, which seldom happens, that the conquerors and conquered never incorporate into one people under the same laws and freedom, let us see next what power a lawful conqueror has over the subdued: and that, I say, is purely despotical. He has an absolute power over the lives of those who by an unjust war have forfeited them, but not over the lives or fortunes of those who engaged not in the war, nor over the possessions even of those who were actually engaged in it.

179. Secondly, I say then, the conqueror gets no power but only over those who have actually assisted, concurred, or consented to that unjust force that is used against him; for the people having given to their governors no power to do an unjust thing, such as is to make an unjust war — for they never had such a power in themselves — they ought not to be charged as guilty of the violence and injustice that is committed in an unjust war any farther than they actually abet it, no more than they are to be thought guilty of any violence or oppression their governors should use upon the people themselves or any part of their fellow subjects, they having empowered them no more to the one than to the other. Conquerors, it is true, seldom trouble themselves to make the distinction, but they willingly permit the confusion of war to sweep all together; but yet this alters not the right, for the conqueror's power over the lives of the conquered being only because they have used force to do or maintain an injustice, he can have that power only over those who have concurred in that force. All the rest are innocent, and he has no more title over the people of that country who have done him no injury, and so have made no forfeiture of their lives, than he has over any other who, without

¹ [William the First conducted the Norman conquest, which was established by the battle of Hastings in 1066. While Locke here supports a right of conquest, and might seem to argue that only the Normans are free, whereas the monarchy might properly claim authority by right of conquest over Saxons and Britons, his actual position is, of course, that since the country was unified and its peoples intermixed, all people might claim an equal freedom. To grant, however, a possible justification for monarchy on the basis of conquest even for the sake of argument was, from Locke's own point of view, a somewhat dubious position. It is worth noting that during the Civil War, various radicals, including the Diggers, had argued that the Norman Conquest was, in fact, an act of oppression, and that landed property gained thereby was simply based on theft.]

any injuries or provocations, have lived upon fair terms with him.

180. Thirdly, The power a conqueror gets over those he overcomes in a just war is perfectly despotal. He has an absolute power over the lives of those who, by putting themselves in a state of war, have forfeited them, but he has not thereby a right and title to their possessions. This I doubt not but at first sight will seem a strange doctrine, it being so quite contrary to the practice of the world; there being nothing more familiar in speaking of the dominion of countries than to say such a one conquered it, as if conquest, without any more ado, conveyed a right of possession. But when we consider that the practice of the strong and powerful, how universal soever it may be, is seldom the rule or right, however it be one part of the subjection of the conquered not to argue against the conditions cut out to them by the conquering sword.

181. Though in all war there be usually a complication of force and damage, and the aggressor seldom fails to harm the estate when he uses force against the persons of those he makes war upon, yet it is the use of force only that puts a man into the state of war; for whether by force he begins the injury or else having quietly and by fraud done the injury, he refuses to make reparation, and by force maintains it — which is the same thing as at first to have done it by force — it is the unjust use of force that makes the war; for he that breaks open my house and violently turns me out of doors, or, having peaceably got in, by force keeps me out, does in effect the same thing. Supposing we are in such a state that we have no common judge on earth whom I may appeal to, and to whom we are both obliged to submit — for of such I am now speaking — it is the unjust use of force, then, that puts a man into the state of war with another, and thereby he that is guilty of it makes a forfeiture of his life; for, quitting reason, which is the rule given between man and man, and using force, the way of beasts, he becomes liable to be destroyed by him he uses force against, as any savage ravenous beast that is dangerous to his being.

182. But because the miscarriages of the father are no faults of the children, and they may be rational and peaceable, notwithstanding the brutishness and injustice of the father, the father, by his miscarriages and violence, can forfeit but his own life, but involves not his children in his guilt or destruction. His goods, which nature that

willeth the preservation of all mankind as much as is possible hath made to belong to the children to keep them from perishing, do still continue to belong to his children; for supposing them not to have joined in the war, either through infancy, absence, or choice, they have done nothing to forfeit them; nor has the conqueror any right to take them away, by the bare title of having subdued him that by force attempted his destruction, though, perhaps, he may have some right to them to repair the damages he has sustained by the war and the defence of his own right, which how far it reaches to the possessions of the conquered we shall see by and by. So that he that by conquest has a right over a man's person to destroy him if he pleases, has not thereby a right over his estate to possess and enjoy it; for it is the brutal force the aggressor has used that gives his adversary a right to take away his life and destroy him if he pleases, as a noxious creature, but it is damage sustained that alone gives him title to another man's goods. For, though I may kill a thief that sets on me in the highway, yet I may not, which seems less, take away his money and let him go; this would be robbery on my side. His force and the state of war he put himself in made him forfeit his life, but gave me no title to his goods. The right, then, of conquest extends only to the lives of those who joined in the war, not to their estates, but only in order to make reparation for the damages received and the charges of the war, and that, too, with reservation of the right of the innocent wife and children.

183. Let the conqueror have as much justice on his side as could be supposed, he has no right to seize more than the vanquished could forfeit; his life is at the victor's mercy, and his service and goods he may appropriate to make himself reparation; but he cannot take the goods of his wife and children; they, too, had a title to the goods he enjoyed, and their shares in the estate he possessed. For example, I in the state of nature — and all commonwealths are in the state of nature one with another — have injured another man, and, refusing to give satisfaction, it comes to a state of war wherein my defending by force what I had gotten unjustly makes me the aggressor. I am conquered; my life, it is true, as forfeit, is at mercy, but not my wife's and children's. They made not the war nor assisted in it. I could not forfeit their lives; they were not mine to forfeit. My wife had a share in my estate; that neither could I forfeit. And my children also,

no more than it excuses the force and passes the right when I put my hand in my pocket and deliver my purse myself to a thief who demands it with a pistol at my breast.

187. From all which it follows that the government of a conqueror, imposed by force on the subdued, against whom he had no right of war, or who joined not in the war against him where he had right, has no obligation upon them.

188. But let us suppose that all the men of that community, being all members of the same body politic, may be taken to have joined in that unjust war wherein they are subdued, and so their lives are at the mercy of the conqueror.

189. I say this concerns not their children who are in their minority; for since a father hath not, in himself, a power over the life or liberty of his child, no act of his can possibly forfeit it. So that the children, whatever may have happened to the fathers, are freemen, and the absolute power of the conqueror reaches no farther than the persons of the men that were subdued by him, and dies with them; and should he govern them as slaves, subjected to his absolute arbitrary power, he has no such right or dominion over their children. He can have no power over them but by their own consent, whatever he may drive them to say or do; and he has no lawful authority whilst force, and not choice, compels them to submission.

190. Every man is born with a double right: first, a right of freedom to his person, which no other man has a power over, but the free disposal of it lies in himself; secondly, a right, before any other man, to inherit with his brethren his father's goods.

191. By the first of these, a man is naturally free from subjection to any government, though he be born in a place under its jurisdiction; but if he disclaim the lawful government of the country he was born in, he must also quit the right that belonged to him by the laws of it and the possessions there descending to him from his ancestors if it were a government made by their consent.

192. By the second, the inhabitants of any country who are descended and derive a title to their estates from those who are subdued and had a government forced upon them against their free consents, retain a right to the possession of their ancestors, though they consent not freely to the government whose hard conditions were by force imposed on the possessors of that country; for, the first conqueror

never having had a title to the land of that country, the people who are the descendants of, or claim under, those who were forced to submit to the yoke of a government by constraint, have always a right to shake it off and free themselves from the usurpation or tyranny which the sword hath brought in upon them, till their rulers put them under such a frame of government as they willingly and of choice consent to. Who doubts but the Grecian Christians, descendants of the ancient possessors of that country, may justly cast off the Turkish yoke which they have so long groaned under, whenever they have an opportunity to do it?⁸ For no government can have a right to obedience from a people who have not freely consented to it; which they can never be supposed to do till either they are put in a full state of liberty to choose their government and governors, or at least till they have such standing laws to which they have by themselves or their representatives given their free consent, and also till they are allowed their due property, which is so to be proprietors of what they have that nobody can take away any part of it without their own consent, without which men under any government are not in the state of freemen but are direct slaves under the force of war.

193. But granting that the conqueror in a just war has a right to the estates as well as power over the persons of the conquered, which, it is plain, he hath not, nothing of absolute power will follow from hence in the continuance of the government, because the descendants of these being all freemen, if he grants them estates and possessions to inhabit his country — without which it would be worth nothing. Whatsoever he grants them they have, so far as it is granted, property in. The nature whereof is that without a man's own consent it cannot be taken from him.

194. Their persons are free by a native right, and their properties, be they more or less, are their own and at their own dispose, and not at his; or else it is no property. Supposing the conqueror gives to one

⁸ [Locke here seems to defend as part of natural right the right of self-determination of peoples, later the basis of modern democratic nationalism, though he would also appear to be arguing the right of political independence where a people was also distinguished by religion from its foreign rulers. It is perhaps worth noting that the romantic liberal nationalism of early 19th century England was concerned not less with Greece than with Italy. Locke here already argues the case of the Greek War of Independence, which more than 130 years later stirred the imagination and action of Byron, who died 1824 at Missolonghi.]

man a thousand acres, to him and his heirs for ever; to another he lets a thousand acres for his life, under the rent of £50 or £500 per annum, has not the one of these a right to his thousand acres for ever, and the other during his life, paying the said rent? And hath not the tenant for life a property in all that he gets over and above his rent, by his labour and industry during the said term, supposing it to be double the rent? Can any one say the king, or conqueror, after his grant, may by his power of conqueror take away all or part of the land from the heirs of one, or from the other during his life, he paying the rent? Or can he take away from either the goods or money they have got upon the said land, at his pleasure? If he can, then all free and voluntary contracts cease and are void in the world. There needs nothing to dissolve them at any time but power enough; and all the grants and promises of men in power are but mockery and collusion; for can there be anything more ridiculous than to say: "I give you and yours this for ever," and that in the surest and most solemn way of conveyance can be devised, and yet it is to be understood that I have a right, if I please, to take it away from you again to-morrow?

195. I will not dispute now whether princes are exempt from the laws of their country, but this I am sure: they owe subjection to the laws of God and nature. Nobody, no power, can exempt them from the obligations of that eternal law. Those are so great and so strong in the case of promises that Omnipotency itself can be tied by them. Grants, promises, and oaths are bonds that hold the Almighty; whatever some flatterers say to princes of the world, who altogether, with all their people joined to them, are, in comparison of the great God, but as a drop of the bucket, or a dust on the balance, inconsiderable, nothing!

196. The short of the case in conquest is this: the conqueror, if he have a just cause, has a despotical right over the persons of all that actually aided and concurred in the war against him, and a right to make up his damage and cost out of their labour and estates, so he injure not the right of any other. Over the rest of the people, if there were any that consented not to the war, and over the children of the captives themselves, or the possessions of either, he has no power; and so can have, by virtue of conquest, no lawful title himself to dominion over them, or derive it to his posterity; but is an aggressor if he attempts upon their properties and thereby puts himself in a state of

war against them, and has no better a right of principality, he, nor any of his successors, than Hingar or Hubba, the Danes, had here in England,⁴ or Spartacus, had he conquered Italy, would have had; which is to have their yoke cast off as soon as God shall give those under their subjection courage and opportunity to do it.⁵ Thus, notwithstanding whatever title the kings of Assyria had over Judah by the sword, God assisted Hezekiah to throw off the dominion of that conquering empire. "And the Lord was with Hezekiah, and he prospered; wherefore he went forth, and he rebelled against the King of Assyria, and served him not" (2 Kings, xviii. 7). Whence it is plain that shaking off a power which force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God but is that which he allows and countenances, though even promises and covenants, when obtained by force, have intervened; for it is very probable to any one that reads the story of Ahaz and Hezekiah attentively, that the Assyrians subdued Ahaz and deposed him, and made Hezekiah king in his father's lifetime; and that Hezekiah by agreement had done him homage and paid him tribute all this time.

CHAPTER XVII

OF USURPATION

197. AS CONQUEST may be called a foreign usurpation, so usurpation is a kind of domestic conquest, with this difference, that an usurper can never have right on his side, it being no usurpation but where one is got into the possession of what another has right to. This, so far as it is usurpation, is a change only of persons, but not of the forms

⁴[Reference is here to the brothers Hengest (also Hengist) and Horsa, Jutes, who in 448 A. D. led the first invasion of England, landed in Thanet, and began the conquest of part of the country near the Thames, East and West Kent.]

⁵Spartacus was a Thracian who escaped from a gladiatorial school in Capua and carried on a war of plunder with an army largely composed of slaves, and defeated four Roman armies. (*Servile War*, 73-71 B. C.). He marched toward Rome, but did not reach it. He was defeated by Crassus in two battles, and died in the second

and rules of the government; for if the usurper extend his power beyond what of right belonged to the lawful princes or governors of the commonwealth, it is tyranny added to usurpation.

198. In all lawful governments the designation of the persons who are to bear rule is as natural and necessary a part as the form of the government itself, and is that which had its establishment originally from the people.¹ Hence all commonwealths, with the form of government established, have rules also of appointing those who are to have any share in the public authority, and settled methods of conveying the right to them; for the anarchy is much alike to have no form of government at all, or to agree that it shall be monarchical but to appoint no way to know or design the person that shall have the power and be the monarch. Whoever gets into the exercise of any part of the power by other ways than what the laws of the community have prescribed hath no right to be obeyed though the form of the commonwealth be still preserved, since he is not the person the laws have appointed and, consequently, not the person the people have consented to. Nor can such an usurper, or any deriving from him, ever have a title, till the people are both at liberty to consent, and have actually consented to allow and confirm in him the power he hath till then usurped.

CHAPTER XVIII

OF TYRANNY

, 199. AS USURPATION is the exercise of power which another hath a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to. And this is making use of the power any

¹ [Here the following passage has been deleted: "the anarchy being much alike to have no form of government at all, or to agree that it shall be monarchical, but to appoint no way to design the person that shall have the power and be the monarch."]

The posthumous editions are the only ones in which this sentence appears twice in the same section. Former editions had the passage in the place where it now has been omitted and where it apparently had been left only by an editor's error when the correction was made. — Ed. H. J., C.]

one has in his hands, not for the good of those who are under it, but for his own private separate advantage — when the governor, however entitled, makes not the law, but his will, the rule, and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion.

200. If one can doubt this to be truth or reason because it comes from the obscure hand of a subject, I hope the authority of a king will make it pass with him. King James the First, in his speech to the parliament, 1603, tells them thus:

I will ever prefer the weal of the public and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine; thinking ever the wealth and weal of the commonwealth to be my greatest weal and worldly felicity — a point wherein a lawful king doth directly differ from a tyrant; for I do acknowledge that the special and greatest point of difference that is between a rightful king and an usurping tyrant is this: that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites, the righteous and just king doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and property of his people.

And again, in his speech to the parliament, 1609, he hath these words:

The king binds himself by a double oath to the observation of the fundamental laws of his kingdom; tacitly, as by being a king, and so bound to protect as well the people as the laws of his kingdom; and expressly, by his oath at his coronation; so as every just king, in a settled kingdom, is bound to observe that paction made to his people by his laws in framing his government agreeable thereunto, according to that paction which God made with Noah after the deluge: Hereafter seedtime and harvest, and cold and heat, and summer and winter and day and night, shall not cease while the earth remaineth. And, therefore, a king governing in a settled kingdom leaves to be a king and degenerates into a tyrant, as soon as he leaves off to rule according to his laws.

And a little after:

Therefore, all kings that are not tyrants, or perjured, will be glad to bound themselves within the limits of their laws; and they that persuade them the contrary are vipers and pests, both against them and the commonwealth.

Thus that learned king, who well understood the notions of things, makes the difference betwixt a king and a tyrant to consist only in this: that one makes the laws the bounds of his power, and the good of the public the end of his government; the other makes all give way to his own will and appetite.

201. It is a mistake to think this fault is proper only to monarchies, other forms of government are liable to it as well as that. For wherever the power that is put in any hands for the government of the people and the preservation of their properties is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it, there it presently becomes tyranny, whether those that thus use it are one or many. Thus we read of the thirty tyrants at Athens, as well as one at Syracuse; and the intolerable dominion of the *decemviri* at Rome was nothing better.¹

202. Wherever law ends tyranny begins, if the law be transgressed to another's harm. And whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate and, acting without authority, may be opposed as any other man who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street may be opposed as a thief and a robber if he endeavours to break into my house to execute a writ, notwithstanding that I know he has such a warrant and such a legal authority as will empower him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate, I would gladly be informed. Is it reasonable that the

¹ [The Thirty Tyrants ruled in Athens (404-403 B. C.), the chief of them being Critias. They invited a Spartan garrison to the Acropolis. They killed off numerous opponents. They were finally defeated by a democratic group and were succeeded by The Ten who were more moderate. The Tyrant of Syracuse here referred to was probably Agathocles who established himself in 317 B. C. with the aid of the Carthaginian, Hamilcar. He later tried to extend his rule and fought against Carthage. The Decemvirs came into power in Rome in 451 B. C. following a period of struggle between patricians and plebeians, and a temporary dictatorship. Actually they drew up a code of law, the celebrated Laws of the Twelve Tables. But they tried to maintain their power after their function was performed, and ruled oppressively. Finally, however, they were forced to abdicate.]

eldest brother, because he has the greatest part of his father's estate, should thereby have a right to take away any of his younger brother's portions? Or that a rich man who possessed a whole country should from thence have a right to seize, when he pleased, the cottage and garden of his poor neighbour? The being rightfully possessed of great power and riches, exceedingly beyond the greatest part of the sons of Adam, is so far from being an excuse, much less a reason, for rapine and oppression, which the endamaging another without authority is, that it is a great aggravation of it; for the exceeding the bounds of authority is no more a right in a great than in a petty officer, no more justifiable in a king than a constable; but is so much the worse in him in that he has more trust put in him, has already a much greater share than the rest of his brethren, and is supposed, from the advantages of his education, employment, and counsellors, to be more knowing in the measures of right and wrong.

203. May the commands, then, of a prince be opposed? May he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and, instead of government and order, leave nothing but anarchy and confusion.

204. To this I answer that force is to be opposed to nothing but to unjust and unlawful force; whoever makes any opposition in any other case draws on himself a just condemnation both from God and man; and so no such danger or confusion will follow, as is often suggested. For:

205. First, As in some countries, the person of the prince by the law is sacred; and so, whatever he commands or does, his person is still free from all question or violence, not liable to force, or any judicial censure or condemnation. But yet opposition may be made to the illegal acts of any inferior officer or other commissioned by him, unless he will, by actually putting himself into a state of war with his people, dissolve the government, and leave them to that defence which belongs to every one in the state of nature; for of such things who can tell what the end will be? And a neighbour kingdom has shown the world an odd example. In all other cases the sacredness of the person exempts him from all inconveniences whereby he is secure, whilst the government stands, from all violence and harm whatsoever; than which there cannot be a wiser constitution, for the

harm he can do in his own person not being likely to happen often nor to extend itself far, nor being able by his single strength to subvert the laws, nor oppose the body of the people. Should any prince have so much weakness and ill nature as to be willing to do it, the inconvenience of some particular mischiefs that may happen sometimes, when a heady prince comes to the throne, are well recompensed by the peace of the public and security of the government in the person of the chief magistrate thus set out of the reach of danger; it being safer for the body that some few private men should be sometimes in danger to suffer than that the head of the republic should be easily and upon slight occasions exposed.

206. Secondly, But this privilege, belonging only to the king's person, hinders not but they may be questioned, opposed, and resisted who use unjust force, though they pretend a commission from him which the law authorizes not. As is plain in the case of him that has the king's writ to arrest a man, which is a full commission from the king, and yet he that has it cannot break open a man's house to do it, nor execute this command of the king upon certain days nor in certain places, though this commission have no such exception in it; but they are the limitations of the law, which, if any one transgress, the king's commission excuses him not; for the king's authority being given him only by the law, he cannot empower any one to act against the law, or justify him by his commission in so doing. The commission or command of any magistrate, where he has no authority, being as void and insignificant as that of any private man, the difference between the one and the other being that the magistrate has some authority so far and to such ends and the private man has none at all; for it is not the commission but the authority that gives the right of acting, and against the laws there can be no authority. But notwithstanding such resistance, the king's person and authority are still both secured, and so no danger to governor or government.

207. Thirdly, Supposing a government wherein the person of the chief magistrate is not thus sacred, yet this doctrine of the lawfulness of resisting all unlawful exercises of his power will not upon every slight occasion endanger him or embroil the government; for where the injured party may be relieved and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law; for nothing is

to be accounted hostile force but where it leaves not the remedy of such an appeal, and it is such force alone that puts him that uses it into a state of war, and makes it lawful to resist him. A man with a sword in his hand demands my purse in the highway, when perhaps I have not twelve pence in my pocket; this man I may lawfully kill. To another I deliver £100 to hold only whilst I alight, which he refuses to restore me when I am got up again, but draws his sword to defend the possession of it by force if I endeavour to retake it. The mischief this man does me is a hundred or possibly a thousand times more than the other perhaps intended me — whom I killed before he really did me any — and yet I might lawfully kill the one, and cannot so much as hurt the other lawfully. The reason whereof is plain: because the one using force, which threatened my life, I could not have time to appeal to the law to secure it, and when it was gone it was too late to appeal. The law could not restore life to my dead carcase — the loss was irreparable, which to prevent, the law of nature gave me a right to destroy him who had put himself into a state of war with me and threatened my destruction. But in the other case, my life not being in danger, I may have the benefit of appealing to the law, and have reparation for my £100 that way.

208. Fourthly, But if the unlawful acts done by the magistrate be maintained — by the power he has got — and the remedy which is due by law be by the same power obstructed, yet the right of resisting, even in such manifest acts of tyranny, will not suddenly or on slight occasions disturb the government; for if it reach no farther than some private men's cases, though they have a right to defend themselves and to recovery by force what by unlawful force is taken from them, yet the right to do so will not easily engage them in a contest wherein they are sure to perish; it being as impossible for one or a few oppressed men to disturb the government, where the body of the people do not think themselves concerned in it, as for a raving madman or heady malcontent to overturn a well-settled state, the people being as little apt to follow the one as the other.

209. But if either these illegal acts have extended to the majority of the people, or if the mischief and oppression has lighted only on some few, but in such cases as the precedent and consequences seem to threaten all, and they are persuaded in their consciences that their laws, and with them their estates, liberties, and lives are in danger,

and perhaps their religion too, how they will be hindered from resisting illegal force used against them, I cannot tell. This is an inconvenience, I confess, that attends all governments whatsoever, when the governors have brought it to this pass to be generally suspected of their people; the most dangerous state which they can possibly put themselves in, wherein they are less to be pitied, because it is so easy to be avoided; it being as impossible for a governor, if he really means the good of his people, and the preservation of them and their laws together, not to make them see and feel it, as it is for the father of a family not to let his children see he loves and takes care of them.

210. But if all the world shall observe pretences of one kind and actions of another, arts used to elude the law, and the trust of prerogative — which is an arbitrary power in some things left in the prince's hand to do good, not harm to the people — employed contrary to the end for which it was given; if the people shall find the ministers and subordinate magistrates chosen suitable to such ends, and favoured or laid by proportionably as they promote or oppose them; if they see several experiments made of arbitrary power, and that religion underhand favoured, though publicly proclaimed against, which is readiest to introduce it, and the operators in it supported as much as may be, and when that cannot be done, yet approved still, and liked the better — if a long train of actions show the councils all tending that way, how can a man any more hinder himself from being persuaded in his own mind which way things are going, or from casting about how to save himself, than he could from believing the captain of the ship he was in was carrying him and the rest of the company to Algiers, when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions did often force him to turn his course another way for some time, which he steadily returned to again as soon as the wind, weather, and other circumstances would let him?

CHAPTER XIX

OF THE DISSOLUTION OF GOVERNMENT

✓211. HE THAT will with any clearness speak of the dissolution of government ought in the first place to distinguish between the dis-

solution of the society and the dissolution of the government. That which makes the community and brings men out of the loose state of nature into one politic society is the agreement which everybody has with the rest to incorporate and act as one body, and so be one distinct commonwealth. The usual and almost only way whereby this union is dissolved is the inroad of foreign force making a conquest upon them; for in that case, not being able to maintain and support themselves as one entire and independent body, the union belonging to that body which consisted therein must necessarily cease, and so every one return to the state he was in before, with a liberty to shift for himself and provide for his own safety, as he thinks fit, in some other society. Whenever the society is dissolved, it is certain the government of that society cannot remain. Thus conquerors' swords often cut up governments by the roots and mangle societies to pieces, separating the subdued or scattered multitude from the protection of and dependence on that society which ought to have preserved them from violence. The world is too well instructed in, and too forward to allow of, this way of dissolving of governments to need any more to be said of it; and there wants not much argument to prove that where the society is dissolved, the government cannot remain — that being as impossible as for the frame of a house to subsist when the materials of it are scattered and dissipated by a whirlwind, or jumbled into a confused heap by an earthquake.

212. Besides this overturning from without, governments are dissolved from within.

First, When the legislative is altered. Civil society being a state of peace amongst those who are of it, from whom the state of war is excluded by the umpirage which they have provided in their legislative for the ending all differences that may arise amongst any of them, it is in their legislative that the members of a commonwealth are united and combined together into one coherent living body. This is the soul that gives form, life, and unity to the commonwealth; from hence the several members have their mutual influence, sympathy, and connexion; and, therefore, when the legislative is broken or dissolved, dissolution and death follows; for the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will. The constitution of the legislative is the first and fundamental act of

society, whereby provision is made for the continuation of their union under the direction of persons and bonds of laws made by persons authorized thereunto by the consent and appointment of the people, without which no one man or number of men amongst them can have authority of making laws that shall be binding to the rest. When any one or more shall take upon them to make laws, whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection and may constitute to themselves a new legislative as they think best, being in full liberty to resist the force of those who without authority would impose anything upon them. Every one is at the disposal of his own will when those who had by the delegation of the society the declaring of the public will are excluded from it, and others usurp the place who have no such authority or delegation.

213. This being usually brought about by such in the commonwealth who misuse the power they have, it is hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens. Let us suppose then the legislative placed in the concurrence of three distinct persons:

(1) A single hereditary person having the constant supreme executive power, and with it the power of convoking and dissolving the other two within certain periods of time.

(2) An assembly of hereditary nobility.

(3) An assembly of representatives chosen *pro tempore* by the people. Such a form of government supposed, it is evident,

214. First, (That when such a single person or prince sets up his own arbitrary will in place of the laws which are the will of the society declared by the legislative, then the legislative is changed) for that being in effect the legislative whose rules and laws are put in execution and required to be obeyed. When other laws are set up, and other rules pretended and enforced, than what the legislative constituted by the society have enacted, it is plain that the legislative is changed. Whoever introduces new laws, not being thereunto authorized by the fundamental appointment of the society, or subverts the old, disowns and overturns the power by which they were made, and so sets up a new legislative.

215. Secondly, (When the prince hinders the legislative from

assembling in its due time, or from acting freely pursuant to those ends for which it was constituted, the legislative is altered, for it is not a certain number of men, no, nor their meeting, unless they have also freedom of debating and leisure of perfecting what is for the good of the society, wherein the legislative consists. When these are taken away or altered so as to deprive the society of the due exercise of their power, the legislative is truly altered; for it is not names that constitute governments but the use and exercise of those powers that were intended to accompany them, so that he who takes away the freedom or hinders the acting of the legislative in its due seasons in effect takes away the legislative and puts an end to the government.

216 Thirdly, When, by the arbitrary power of the prince, the electors or ways of election are altered without the consent and contrary to the common interest of the people, there also the legislative is altered; for, if others than those whom the society hath authorized thereunto do choose, or in another way than what the society hath prescribed, those chosen are not the legislative appointed by the people.

217. Fourthly, The delivery also of the people into the subjection of a foreign power, either by the prince or by the legislative, is certainly a change of the legislative, and so a dissolution of the government for the end why people entered into society being to be preserved one entire, free, independent society, to be governed by its own laws, this is lost whenever they are given up into the power of another.

218. Why in such a constitution as this the dissolution of the government in these cases is to be imputed to the prince is evident. Because he, having the force, treasure, and offices of the state to employ, and often persuading himself, or being flattered by others, that as supreme magistrate he is incapable of control — he alone is in a condition to make great advances toward such changes, under pretence of lawful authority, and has it in his hands to terrify or suppress opposers as factious, seditious, and enemies to the government. Whereas no other part of the legislative or people is capable by themselves to attempt any alteration of the legislative, without open and visible rebellion apt enough to be taken notice of, which, when it prevails, produces effects very little different from foreign conquest. Besides, the prince in such a form of government having the power of dissolving the other parts of the legislative, and thereby rendering

them private persons, they can never in opposition to him or without his concurrence alter the legislative by a law, his consent being necessary to give any of their decrees that sanction. But yet, so far as the other parts of the legislative any way contribute to any attempt upon the government, and do either promote or not, what lies in them, hinder such designs, they are guilty, and partake in this, which is certainly the greatest crime men can be guilty of one towards another. , 219. There is one way more whereby such a government may be dissolved, and that is when he who has the supreme executive power neglects and abandons that charge, so that the laws already made can no longer be put in execution. This is demonstratively to reduce all to anarchy, and so effectually to dissolve the government; for laws not being made for themselves, but to be by their execution the bonds of the society, to keep every part of the body politic in its due place and function. When that totally ceases, the government visibly ceases, and the people become a confused multitude, without order or connexion. Where there is no longer the administration of justice for the securing of men's rights, nor any remaining power within the community to direct the force or provide for the necessities of the public, there certainly is no government left. Where the laws cannot be executed, it is all one as if there were no laws; and a government without laws is, I suppose, a mystery in politics, inconceivable to human capacity and inconsistent with human society.

220. In these and the like cases, when the government is dissolved, the people are at liberty to provide for themselves by erecting a new legislative, differing from the other by the change of persons or form, or both, as they shall find it most for their safety and good; for the society can never by the fault of another lose the native and original right it has to preserve itself, which can only be done by a settled legislative, and a fair and impartial execution of the laws made by it. But the state of mankind is not so miserable that they are not capable of using this remedy till it be too late to look for any. To tell people they may provide for themselves by erecting a new legislative, when by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them they may expect relief when it is too late and the evil is past cure. This is in effect no more than to bid them first be slaves, and then to take care of their liberty; and when their chains are on, tell them they may act like freemen. This,

if barely so, is rather mockery than relief; and men can never be secure from tyranny if there be no means to escape it till they are perfectly under it; and therefore it is that they have not only a right to get out of it, but to prevent it.

' 221. There is, therefore, secondly, another way whereby governments are dissolved, and that is when the legislative or the prince, either of them, act contrary to their trust.

First, The legislative acts against the trust reposed in them when they endeavour to invade the property of the subject, and to make themselves or any part of the community masters or arbitrary disposers of the lives, liberties, or fortunes of the people.

' 222. The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is that there may be laws made and rules set as guards and fences to the properties of all the members of the society, to limit the power and moderate the dominion of every part and member of the society; for since it can never be supposed to be the will of the society that the legislative should have a power to destroy that which every one designs to secure by entering into society, and for which the people submitted themselves to legislators of their own making. Whenever the legislators endeavour to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men against force and violence. Whensoever, therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly, or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people, by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people who have a right to resume their original liberty, and by the establishment of a new legislative, such as they shall think fit, provide for their own safety and security, which is the end for which they are in society.) What I have said here concerning the legislative in general holds true also concerning the supreme executor, who having a double trust put in him — both to have a part in the legislative and the supreme execution of the law — acts against both when he goes about

to set up his own arbitrary will as the law of the society. He acts also contrary to his trust when he either employs the force, treasure, and offices of the society to corrupt the representatives and gain them to his purposes, or openly pre-engages the electors and prescribes to their choice such whom he has by solicitations, threats, promises, or otherwise won to his designs, and employs them to bring in such who have promised beforehand what to vote and what to enact. Thus to regulate candidates and electors, and new-model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security? For the people, having reserved to themselves the choice of their representatives, as the fence to their properties, could do it for no other end but that they might always be freely chosen, and, so chosen, freely act and advise as the necessity of the commonwealth and the public good should upon examination and mature debate be judged to require. This, those who give their votes before they hear the debate, and have weighed the reasons on all sides, are not capable of doing. To prepare such an assembly as this, and endeavour to set up the declared abettors of his own will for the true representatives of the people and the lawmakers of the society, is certainly as great a breach of trust and as perfect a declaration of a design to subvert the government as is possible to be met with. To which if one shall add rewards and punishments visibly employed to the same end, and all the arts of perverted law made use of to take off and destroy all that stand in the way of such a design, and will not comply and consent to betray the liberties of their country, it will be past doubt what is doing. What power they ought to have in the society who thus employ it contrary to the trust that went along with it in its first institution is easy to determine; and one cannot but see that he who has once attempted any such thing as this cannot any longer be trusted.

¶ 223. To this perhaps it will be said that the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people is to expose it to certain ruin; and no government will be able long to subsist, if the people may set up a new legislative whenever they take offence at the old one. To this I answer: Quite the contrary. People are not so easily got out of their old forms as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in

the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time or corruption, it is not an easy thing to get them changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions has in the many revolutions which have been seen in this kingdom, in this and former ages, still kept us to, or after some interval of fruitless attempts still brought us back again to, our old legislative of king, lords, and commons; and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line.

224. (But it will be said this hypothesis lays a ferment for frequent rebellion. To which I answer:

First, No more than any other hypothesis; for when the people are made miserable, and find themselves exposed to the ill-usage of arbitrary power, cry up their governors as much as you will for sons of Jupiter, let them be sacred or divine, descended, or authorized from heaven, give them out for whom or what you please, the same will happen. The people generally ill-treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish and seek for the opportunity, which in the change, weakness, and accidents of human affairs seldom delays long to offer itself. He must have lived but a little while in the world who has not seen examples of this in his time, and he must have read very little who cannot produce examples of it in all sorts of governments in the world.

225. Secondly, I answer, such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be born by the people without mutiny or murmur. But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under and see whither they are going, it is not to be wondered that they should then rouse themselves and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected, and without which ancient names and specious forms are so far from being better that they are much worse than the state of nature or pure anarchy — the incon-

veniences being all as great and as near, but the remedy farther off and more difficult.

226. (Thirdly, I answer that this doctrine of a power in the people of providing for their safety anew by a new legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it;) for rebellion being an opposition, not to persons, but authority which is founded only in the constitutions and laws of the government, those, whoever they be, who by force break through, and by force justify their violation of them, are truly and properly rebels; for when men, by entering into society and civil government, have excluded force and introduced laws for the preservation of property, peace, and unity amongst themselves, those who set up force again in opposition to the laws do *rebellare* — that is, bring back again the state of war — and are properly rebels; which they who are in power, by the pretence they have to authority, the temptation of force they have in their hands and the flattery of those about them, being likeliest to do, the properest way to prevent the evil is to show them the danger and injustice of it who are under the greatest temptation to run into it)

227. (In both the forementioned cases, when either the legislative is changed or the legislators act contrary to the end for which they were constituted, those who are guilty are guilty of rebellion; for if any one by force takes away the established legislative of any society, and the laws of them made pursuant to their trust, he thereby takes away the umpirage which every one had consented to for a peaceable decision of all their controversies, and a bar to the state of war amongst them. They who remove or change the legislative take away this decisive power which nobody can have but by the appointment and consent of the people,) and so destroying the authority which the people did, and nobody else can, set up, and introducing a power which the people hath not authorized, they actually introduce a state of war which is that of force without authority; and thus by removing the legislative established by the society — in whose decisions the people acquiesced and united as to that of their own will — they untie the knot and expose the people anew to the state of war. And if those who by force take away the legislative are rebels, the legislators themselves, as has been shown, can be no less esteemed so, when they who were set up for the protection and preservation of the people, their

liberties and properties, shall by force invade and endeavour to take them away; and so they putting themselves into a state of war with those who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation, *rebellantes*, rebels.

228. (But if they who say "it lays a foundation for rebellion" mean that it may occasion civil wars or intestine broils, to tell the people they are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates when they invade their properties contrary to the trust put in them, and that therefore this doctrine is not to be allowed,) being so destructive to the peace of the world: they may as well say, upon the same ground, that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed. If any mischief come in such cases, it is not to be charged upon him who defends his own right, but on him that invades his neighbour's. If the innocent honest man must quietly quit all he has, for peace's sake, to him who will lay violent hands upon it, I desire it may be considered what a kind of peace there will be in the world, which consists only in violence and rapine, and which is to be maintained only for the benefit of robbers and oppressors. Who would not think it an admirable peace betwixt the mighty and the mean when the lamb without resistance yielded his throat to be torn by the imperious wolf? Polyphemus' den gives us a perfect pattern of such a peace and such a government, wherein Ulysses and his companions had nothing to do but quietly to suffer themselves to be devoured. And no doubt Ulysses, who was a prudent man, preached up passive obedience, and exhorted them to a quiet submission by representing to them of what concernment peace was to mankind, and by showing the inconveniences might happen, if they should offer to resist Polyphemus, who had now the power over them.¹

v. 229. (The end of government is the good of mankind. And which is best for mankind? That the people should be always exposed to

¹ [Reference is here to Homer's *Odyssey*. In the course of his travels, Ulysses and his men were wrecked on the isle of the Cyclops, the one-eyed giants. Polyphemus was their leader. He imprisoned Ulysses and his twelve men, and ate one a day for six days. Ulysses got him drunk, blinded him, and he and his remaining men escaped by clinging to the bellies of Polyphemus' sheep as they went out of the cave to pasture. Homer describes the Cyclops as living without laws or rights.]

the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their power and employ it for the destruction and not the preservation of the properties of their people?)

230. Nor let any one say that mischief can arise from hence, as often as it shall please a busy head or turbulent spirit to desire the alteration of the government. It is true such men may stir whenever they please, but it will be only to their own just ruin and perdition; for till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people who are more disposed to suffer than right themselves by resistance are not apt to stir. The examples of particular injustice or oppression of here and there an unfortunate man, moves them not. But if they universally have a persuasion grounded upon manifest evidence that designs are carrying on against their liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their governors, who is to be blamed for it? Who can help it if they, who might avoid it, bring themselves into this suspicion? Are the people to be blamed if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them? And is it not rather their fault who put things into such a posture that they would not have them thought to be as they are? I grant that the pride, ambition, and turbulency of private men have sometimes caused great disorders in commonwealths, and factions have been fatal to states and kingdoms. But whether the mischief hath oftener begun in the people's wantonness and a desire to cast off the lawful authority of their rulers, or in the rulers' insolence and endeavours to get and exercise an arbitrary power over their people — whether oppression or disobedience gave the first rise to the disorder, I leave it to impartial history to determine. This I am sure: whoever, either ruler or subject, by force goes about to invade the rights of either prince or people and lays the foundation for overturning the constitution and frame of any just government is highly guilty of the greatest crime I think a man is capable of — being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country. And he who does it is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly.

231. That subjects or foreigners attempting by force on the properties of any people may be resisted with force, is agreed on all hands. But that magistrates doing the same thing may be resisted, hath of late been denied; as if those who had the greatest privileges and advantages by the law had thereby a power to break those laws by which alone they were set in a better place than their brethren; whereas their offence is thereby the greater, both as being ungrateful for the greater share they have by the law, and breaking also that trust which is put into their hands by their brethren.

232. Whosoever uses force without right, as every one does in society who does it without law, puts himself into a state of war with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself and to resist the aggressor. This is so evident that Barclay himself, that great assertor of the power and sacredness of kings, is forced to confess that it is lawful for the people in some cases to resist their king; and that, too, in a chapter wherein he pretends to show that the divine law shuts up the people from all manner of rebellion. Whereby it is evident, even by his own doctrine, that, since they may in some cases resist, all resisting of princes is not rebellion. His words are these:

Quod si quis dicat, Ergone populus tyrannicæ crudelitati et furori jugulum semper præbebit? Ergone multitudo civitates suas fame, ferro, et flammâ vastari, seque, conjuges, et liberos fortunæ ludibrio et tyranni libidini exponi, inque omnia vitæ pericula omnesque misérias et molestias à rege deduci patientur? Num illis quod omni animantium generi est à naturâ tributum, denegari debet, ut sc. vim vi repellant, seseq; ab injuriâ tueantur? Huic breviter responsum sit, Populo universo negari defensionem, quæ juris naturalis est, neque ultionem quæ præter naturam est adversus regem concedi debere. Quapropter si rex non in singulares tantum personas aliquot privatum odium exerceat, sed corpus etiam reipublicæ, cujus ipse caput est, *i. e.* totum populum, vel insignem aliquam ejus partem immani et intolerandâ sævitia seu tyrannide divexet; populo quidem hoc casu resistendi ac tuendi se ab injuriâ potestas competit; sed tuendi se tantum, non enim in principem invadendi: et restituendæ injuriæ illatæ, non recedendi à debitâ reverentiâ propter acceptam injuriam. Præsentem denique impetum propulsandi non vim præteritam ulciscendi jus habet. Horum enim alterum à naturâ est, ut vitam scilicet corpusque tueamur. Alterum vero contra naturam, ut inferior de superiori supplicium sumat. Quod itaque populus malum,

antequam factum sit, impedire potest, ne fiat; id postquam factum est, in regem authorem sceleris vindicare non potest: populus igitur hoc amplius quam privatus quispiam habet: quod huic, vel ipsis adversariis iudicibus, excepto Buchanano, nullum nisi in patientia remedium superest. Cum ille si intolerabilis tyrannus est (modicum enim ferre omnino debet) resistere cum reverentiâ possit. — Barclay, *Contra Monarchomachos*, l. iii. c. 8.

In English thus:

233. But if any one should ask: Must the people then always lay themselves open to the cruelty and rage of tyranny? Must they see their cities pillaged and laid in ashes, their wives and children exposed to the tyrant's lust and fury, and themselves and families reduced by their king to ruin, and all the miseries of want and oppression, and yet sit still? Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation from injury? I answer: Self-defence is a part of the law of nature, nor can it be denied the community, even against the king himself; but to revenge themselves upon him must by no means be allowed them, it being not agreeable to that law. Wherefore, if the king should show an hatred, not only to some particular persons, but sets himself against the body of the commonwealth whereof he is the head, and shall with intolerable ill-usage cruelly tyrannize over the whole or a considerable part of the people, in this case the people have a right to resist and defend themselves from injury; but it must be with this caution, that they only defend themselves, but do not attack their prince; they may repair the damages received, but must not for any provocation exceed the bounds of due reverence and respect. They may repulse the present attempt, but must not revenge past violences; for it is natural for us to defend life and limb, but that an inferior should punish a superior is against nature. The mischief which is designed them the people may prevent before it be done; but when it is done, they must not revenge it on the king, though author of the villainy. This therefore is the privilege of the people in general, above what any private person hath: that particular men are allowed by our adversaries themselves — Buchanan* only excepted — to have no other remedy but patience, but the body of the people may with reverence resist intolerable tyranny; for when it is but moderate, they ought to endure it.

* [George Buchanan (1506-1582) was a 16th century Scottish humanist who in his *De Jure Regni Apud Scotos* (1597) argued that the people were the source of political powers and condemned the divine right theory of monarchy. His major work *Rerum Scotticarum Historia* was published immediately before his death. (Cf. footnote No. 1, page 187.)]

234. Thus far that great advocate of monarchical power allows of resistance.

235. It is true he has annexed two limitations to it, to no purpose: First, He says, it must be with reverence.

Secondly, It must be without retribution or punishment; and the reason he gives is: Because an inferior cannot punish a superior.

First, How to resist force without striking again, or how to strike with reverence, will need some skill to make intelligible. He that shall oppose an assault only with a shield to receive the blows, or in any more respectful posture, without a sword in his hand, to abate the confidence and force of the assailant, will quickly be at an end of his resistance, and will find such a defence serve only to draw on himself the worse usage. This is as ridiculous a way of resisting as Juvenal³ thought it of fighting: *ubi tu pulsas, ego vapulo tantum*. And the success of the combat will be unavoidably the same he there describes it:

Libertas pauperis hæc est:
Pulsatus rogat, et pugnis concisus adorat,
Ut liceat paucis cum dentibus inde reverti.

This will always be the event of such an imaginary resistance, where men may not strike again. He, therefore, who may resist must be allowed to strike. And then let our author or any body else join a knock on the head or a cut on the face with as much reverence and respect as he thinks fit. He that can reconcile blows and reverence may, for aught I know, deserve for his pains a civil, respectful cudgelling, wherever he can meet with it.

Secondly, As to his second: An inferior cannot punish a superior. That is true, generally speaking, whilst he is his superior. But to resist force with force, being the state of war that levels the parties, cancels all former relation of reverence, respect, and superiority; and then the odds that remains is that he who opposes the unjust aggressor has this superiority over him, that he has a right, when he prevails, to punish the offender both for the breach of the peace and all the evils that followed upon it. Barclay, therefore, in another place, more coherently to himself, denies it to be lawful to resist a king in any case. But he there assigns two cases whereby a king may unking himself. His words are:

³ [Juvenal (60-140 A. D.) was one of the great poets of the early Silver Age and a bitter satirist of the Roman society of his day.]

Quid ergo, nulline casus incidere possunt quibus populo sese erigere atque in regem impotentius dominantem arma capere et invadere jure suo suâque autoritate liceat? Nulli certe quamdiu rex manet. Semper enim ex divinis id obstat, Regem honorificato; et qui potestati resistit, Dei ordinationi resistit: non aliâs igitur in eum populo potestas est quam si id committat propter quod ipso jure rex esse desinat. Tunc enim se ipse principatu exiit atque in privatis constituit liber: hoc modo populus et superior efficitur, reverso ad eum sc. jure illo quod ante regem inauguratum in interregno habuit. At sunt paucorum generum commissa ejusmodi quæ hunc effectum pariunt. At ego cum plurima animo perlustrem, duo tantum invenio, duos, inquam, casus quibus rex ipso facto ex rege non regem se facit et omni honore et dignitate regali atque in subditos potestate destituit; quorum etiam meminit Winzerus. Horum unus est, si regnum disperdat, quemadmodum de Nerone fertur, quod is nempe senatum populumque Romanum atque adeo urbem ipsam ferro flammaque vastare, ac novas sibi sedes quærere, decrevisset. Et de Caligula, quod palam denunciavit se neque civem neque principem senatui amplius fore, inque animo habuerit interempto utriusque ordinis electissimo quoque Alexandriam commigrare, ac ut populum uno ictu interimeret, unam ei cervicem optavit. Talia cum rex aliquis meditatur et molitur serio, omnem regnandi curam et animum ilico abjicit, ac proinde imperium in subditos amittit, ut dominus servi pro derelicto habiti dominium.

236. Alter casus est, si rex in alicujus clientelam se contulit, ac regnum quod liberum à majoribus et populo traditum accepit, alienæ ditioni mancipavit. Nam tunc quamvis forte non eâ mente id agit populo plane ut incommodet: tamen quia quod præcipuum est regis dignitatis amisit, ut summus scilicet in regno secundum Deum sit, et solo Deo inferior, atque populum etiam totum ignorantem vel invitum, cujus libertatem sartam et tectam conservare debuit in alterius gentis ditionem et potestatem dedit, hâc velut quadam regni ab alienatione efficit, ut nec quod ipse in regno imperium habuit retineat, nec in eum cui collatum voluit, juris quicquam transferat; atque ita eo facto liberum jam et suæ potestatis populum relinquit, cujus rei exemplum unum annales Scotici suppeditant. — Barclay, *Contra Monarchomachos*, l. iii. c. 16.

Which in English runs thus:

237. What, then, can there no case happen wherein the people may of right and by their own authority help themselves, take arms, and set upon their king imperiously domineering over them? None at all whilst he remains a king. "Honour the king," and "He that resists the power resists the ordinance of God," are divine oracles that will never permit it. The people, therefore, can never come by a power

over him, unless he does something that makes him cease to be a king; for then he divests himself of his crown and dignity and returns to the state of a private man, and the people become free and superior, the power which they had in the interregnum, before they crowned him king, devolving to them again. But there are but few mis-carriages which bring the matter to this state. After considering it well on all sides, I can find but two. Two cases there are, I say, whereby a king, *ipso facto*, becomes no king and loses all power and regal authority over his people; which are also taken notice of by Winzerus.⁴

The first is, if he endeavour to overturn the government, that is, if he have a purpose and design to ruin the kingdom and common-wealth, as it is recorded of Nero, that he resolved to cut off the senate and people of Rome, lay the city waste with fire and sword, and then remove to some other place; and of Caligula⁵ that he openly declared that he would be no longer a head to the people or senate, and that he had it in his thoughts to cut off the worthiest men of both ranks, and then retire to Alexandria, and he wished that the people had but one neck, that he might dispatch them all at a blow — such designs as these, when any king harbours in his thoughts and seriously promotes, he immediately gives up all care and thought of the common-wealth, and consequently forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned.

238. The other case is, when a king makes himself the dependent of another, and subjects his kingdom which his ancestors left him and the people put free into his hands to the dominion of another; for however perhaps it may not be his intention to prejudice the people, yet because he has hereby lost the principal part of regal dignity, viz., to be next and immediately under God supreme in his kingdom, and also because he betrayed or forced his people, whose liberty he ought to have carefully preserved, into the power and dominion of a foreign nation. By this, as it were, alienation of his kingdom, he himself loses the power he had in it before, without transferring any

⁴ [Probably Ninian Winzet, Winet, or Wingate (1518–1592). A Scottish writer, teacher, and theologian. Originally devoted to combatting the Reformation from within, he finally came to a head-on collision with Knox. For a while he was confessor to Mary, Queen of Scots. In 1577 he became Abbot of the Benedictine Monastery of St. James of Ratisbon, which he revived. In the course of his earlier opposition to the Reformation he wrote his *Buke of Four Scoir Thre Questions*. In it he dealt, along with numerous other subjects, with the duty of subjects to obey their rulers.]

⁵ [Caligula, who was Emperor from 37 to 41 A. D., enjoyed a reputation as an oppressive tyrant. He was thought to be half-mad, and was finally killed by the Pretorian Guards.]

the least right to those on whom he would have bestowed it, and so by this act sets the people free, and leaves them at their own disposal. One example of this is to be found in the *Scottish Annals*.

239. In these cases Barclay, the great champion of absolute monarchy, is forced to allow that a king may be resisted and ceases to be a king. That is, in short, not to multiply cases, in whatsoever he has no authority, there he is no king and may be resisted; for where-soever 'the authority ceases, the king ceases, too, and becomes like other men who have no authority. And these two cases he instances in differ little from those above-mentioned to be destructive to governments, only that he has omitted the principle from which his doctrine flows; and that is the breach of trust in not preserving the form of government agreed on, and in not intending the end of government itself, which is the public good and preservation of property. When a king has dethroned himself and put himself in a state of war with his people, what shall hinder them from prosecuting him who is no king, as they would any other man who has put himself into a state of war with them? Barclay and those of his opinion would do well to tell us. This further I desire may be taken notice of out of Barclay, that he says, "The mischief that is designed them the people may prevent before it be done," whereby he allows resistance when tyranny is but in design. "Such designs as these," says he, "when any king harbours in his thoughts and seriously promotes, he immediately gives up all care and thought of the commonwealth," so that, according to him, the neglect of the public good is to be taken as an evidence of such design, or at least for a sufficient cause of resistance. And the reason of all he gives in these words: "Because he betrayed or forced his people whose liberty he ought carefully to have preserved." What he adds — "into the power and dominion of a foreign nation" — signifies nothing, the fault and forfeiture lying in the loss of their liberty which he ought to have preserved, and not in any distinction of the persons to whose dominion they were subjected. The people's right is equally invaded and their liberty lost whether they are made slaves to any of their own or a foreign nation; and in this lies the injury, and against this only have they the right of defence. And there are instances to be found in all countries which show that it is not the change of nations in the persons of their governors but the change of government that gives the offence. Bilson, a bishop of our church,

and a great stickler for the power and prerogative of princes, does, if I mistake not, in his treatise of "Christian Subjection," acknowledge that princes may forfeit their power and their title to the obedience of their subjects;⁶ and if there needed authority in a case where reason is so plain, I could send my reader to Bracton, Fortescue, and the author of *The Mirror*,⁷ and others — writers that cannot be suspected to be ignorant of our government, or enemies to it. But I thought Hooker alone might be enough to satisfy those men who, relying on him for their ecclesiastical polity, are by a strange fate carried to deny those principles upon which he builds it. Whether they are herein made the tools of cunninger workmen to pull down their own fabric, they were best look. This I am sure: their civil policy is so new, so dangerous, and so destructive to both rulers and people that as former ages never could bear the broaching of it, so it may be hoped those to come, redeemed from the impositions of these Egyptian under-taskmasters, will abhor the memory of such servile flatterers who, whilst it seemed to serve their turn, resolved all government into absolute tyranny, and would have all men born to what their mean souls fitted them for — slavery.

§240. Here, it is like, the common question will be made: "Who shall be judge whether the prince or legislative act contrary to their trust?" This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply: The people shall be judge; for who shall be judge whether his trustee or deputy acts well and according to the trust reposed in him but he who deposes him and must, by having deposed him, have still a power to discard him when he fails in his trust? If this be reasonable in particular cases of private men, why

⁶ [Thomas Bilson (ca. 1546–1616). The work here referred to is entitled *True Difference between Christian Subjection and Unchristian Rebellion* (1585). In 1593 Bilson published *Perpetual Government of Christ His Church*.]

⁷ [Henry de Bracton, who died in 1268, was a celebrated lawyer and one of the early authorities on the English constitution, though greatly influenced by Roman law. His celebrated treatise, *De Legibus et Consuetudinibus Angliæ*, written before 1256, was first published in 1569. Sir John Fortescue (1394–1476) was a lawyer and political thinker. His most celebrated work was *De Laudibus Legum Angliæ*. He also wrote *De Monarchia, or the Governance of England*. *The Mirror for Justice*, a curious mixture of fact and myth, was written by a fishmonger in the time of Edward I.

should it be otherwise in that of the greatest moment where the welfare of millions is concerned, and also where the evil, if not prevented, is greater and the redress very difficult, dear, and dangerous?

241. But further, this question, "Who shall be judge?" cannot mean that there is no judge at all; for where there is no judicature on earth to decide controversies amongst men, God in heaven is Judge. He alone, it is true, is Judge of the right. But every man is judge for himself, as in all other cases, so in this, whether another hath put himself into a state of war with him, and whether he should appeal to the Supreme Judge, as Jephthah did.

242. If a controversy arise betwixt a prince and some of the people in a matter where the law is silent or doubtful, and the thing be of great consequence, I should think the proper umpire in such a case should be the body of the people; for in cases where the prince hath a trust reposed in him and is dispensed from the common ordinary rules of the law, there, if any men find themselves aggrieved and think the prince acts contrary to or beyond that trust, who so proper to judge as the body of the people — who, at first, lodged that trust in him — how far they meant it should extend? But if the prince, or whoever they be in the administration, decline that way of determination, the appeal then lies nowhere but to heaven; force between either persons who have no known superior on earth, or which permits no appeal to a judge on earth, being properly a state of war wherein the appeal lies only to heaven; and in that state the injured party must judge for himself when he will think fit to make use of that appeal and put himself upon it.

243. To conclude, the power that every individual gave the society when he entered into it can never revert to the individuals again as long as the society lasts, but will always remain in the community, because without this there can be no community, no commonwealth, which is contrary to the original agreement; so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors with direction and authority for providing such successors, the legislative can never revert to the people whilst that government lasts, because having provided a legislative with power to continue for ever, they have given up their political power to the legislative and cannot resume it. But if they have set limits to the duration of their legislative and made this supreme power in any

person or assembly only temporary, or else when by the miscarriages of those in authority it is forfeited, upon the forfeiture, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme and continue the legislative in themselves, or erect a new form, or under the old form place it in new hands, as they think good.

PATRIARCHA

OR THE

NATURAL POWER OF KINGS

By
THE LEARNED SIR ROBERT FILMER, BART.

*Libertas populi, quem regna coercent
Libertate perit—Lucan, Lib. iii.*

*Fallitur egregio quisquis sub principe credit
Servitium; nunquam libertas gratior extat
Quam sub Rege pio—Claudian.*

CHAPTER I

THAT THE FIRST KINGS WERE FATHERS OF FAMILIES

1. SINCE the time that school divinity began to flourish there hath been a common opinion maintained, as well by divines as by divers other learned men, which affirms:

“Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude.”

This tenet was first hatched in the schools, and hath been fostered by all succeeding Papists for good divinity. The divines, also, of the Reformed Churches have entertained it, and the common people everywhere tenderly embrace it as being most plausible to flesh and blood, for that it prodigally distributes a portion of liberty to the meanest of the multitude, who magnify liberty as if the height of human felicity were only to be found in it, never remembering that the desire of liberty was the first cause of the fall of Adam.

But howsoever this vulgar opinion hath of late obtained a great reputation, yet it is not to be found in the ancient fathers and doctors of the primitive Church. It contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature. It is hard to say whether it be more erroneous in divinity or dangerous in policy.

Yet upon the ground of this doctrine, both Jesuits and some other zealous favourers of the Geneva discipline have built a perilous conclusion, which is, that the people or multitude have power to punish or deprive the prince if he transgress the laws of the kingdom; witness Parsons and Buchanan. The first, under the name of Dolman, in the third chapter of his first book, labours to prove that kings have been lawfully chastised by their commonwealths. The latter, in his book *De Jure Regni apud Scotos*, maintains a liberty of the people to depose their prince. Cardinal Bellarmine and Calvin both look asquint this way.

This desperate assertion whereby kings are made subject to the censures and deprivations of their subjects follows — as the authors of it conceive — as a necessary consequence of that former position of the supposed natural equality and freedom of mankind, and liberty to choose what form of government it please.

And though Sir John Heywood, Adam Blackwood, John Barclay, and some others have learnedly confuted both Buchanan and Parsons, and bravely vindicated the right of kings in most points, yet all of them, when they come to the argument drawn from the “natural liberty” and “equality of mankind,” do with one consent admit it for a truth unquestionable, not so much as once denying or opposing it, whereas if they did but confute this first erroneous principle the whole fabric of this vast engine of popular sedition would drop down of itself.

The rebellious consequence which follows this prime article of the natural freedom of mankind may be my sufficient warrant for a modest examination of the original truth of it. Much hath been said, and by many, for the affirmative; equity requires that an ear be reserved a little for the negative.

In this discourse I shall give myself these cautions:

First, I have nothing to do to meddle with mysteries of state, such *arcana imperii*, or cabinet councils, the vulgar may not pry into. An implicit faith is given to the meanest artificer in his own craft; how much more is it, then, due to a prince in the profound secrets of government. The causes and ends of the greatest politic actions and motions of state dazzle the eyes and exceed the capacities of all men, save only those that are hourly versed in the managing public affairs. Yet since the rule for each man to know in what to obey his prince cannot be learnt without a relative knowledge of those points wherein a sovereign may command, it is necessary when the commands and pleasures of superiors come abroad and call for an obedience that every man himself know how to regulate his actions or his sufferings; for according to the quality of the thing commanded an active or passive obedience is to be yielded, and this is not to limit the prince's power, but the extent of the subject's obedience, by giving to Caesar the things that are Caesar's, etc.

Secondly, I am not to question or quarrel at the rights or liberties of this or any other nation; my task is chiefly to inquire from whom these first came, not to dispute what or how many these are, but

whether they were derived from the laws of natural liberty or from the grace and bounty of princes. My desire and hope is that the people of England may and do enjoy as ample privileges as any nation under heaven; the greatest liberty in the world — if it be duly considered — is for a people to live under a monarch. It is the Magna Charta of this kingdom; all other shows or pretexts of liberty are but several degrees of slavery, and a liberty only to destroy liberty.

If such as maintain the natural liberty of mankind take offence at the liberty I take to examine it, they must take heed that they do not deny by retail that liberty which they affirm by wholesale. For if the thesis be true, the hypothesis will follow that all men may examine their own charters, deeds, or evidences by which they claim and hold the inheritance or freehold of their liberties.

Thirdly, I must not detract from the worth of all those learned men who are of a contrary opinion in the point of natural liberty. The profoundest scholar that ever was known hath not been able to search out every truth that is discoverable; neither Aristotle in philosophy, nor Hooker in divinity. They are but men, yet I reverence their judgments in most points, and confess myself beholding to their errors too in this. Something that I found amiss in their opinions guided me in the discovery of that truth which — I persuade myself — they missed. A dwarf sometimes may see that which a giant looks over; for whilst one truth is curiously searched after, another must necessarily be neglected. Late writers have taken up too much upon trust from the subtle schoolmen, who, to be sure to thrust down the king below the pope, thought it the safest course to advance the people above the king, that so the papal power might take place of the regal. Thus many an ignorant subject hath been fooled into this faith that a man may become a martyr for his country by being a traitor to his prince; whereas the new coined distinction of subjects into royalists and patriots is most unnatural, since the relation between king and people is so great that their well-being is so reciprocal.

2. To make evident the grounds of this question about the natural liberty of mankind, I will lay down some passages of Cardinal Bellarmine that may best unfold the state of this controversy.

Secular or civil power is instituted by men; it is in the people, unless they bestow it on a prince. This power is immediately in the whole multitude, as in the subject of it; for this power is in the

divine law, but the divine law hath given this power to no particular man. If the positive law be taken away, there is left no reason why amongst a multitude — who are equal — one rather than another should bear rule over the rest. Power is given by the multitude to one man or to more by the same law of nature; for the commonwealth cannot exercise this power; therefore it is bound to bestow it upon some one man, or some few. It depends upon the consent of the multitude to ordain over themselves a king, or consul, or other magistrates; and if there be a lawful cause, the multitude may change the kingdom into an aristocracy or democracy.

Thus far Bellarmine, in which passages are comprised the strength of all that ever I have read or heard produced for the natural liberty of the subject.

Before I examine or refute these doctrines, I must a little make some observations upon his words

First, He saith that by the law of God power is immediately in the people; hereby he makes God to be the immediate author of a democratical estate; for a democracy is nothing else but the power of the multitude. If this be true, not only aristocracies but all monarchies are altogether unlawful, as being ordained — as he thinks — by men, whereas God himself hath chosen a democracy.

Secondly, He holds that, although a democracy be the ordinance of God, yet the people have no power to use the power which God hath given them, but only power to give away their power, whereby it followeth that there can be no democratical government, because he saith the people must give their power to one man, or to some few; which maketh either a regal or aristocratical estate, which the multitude is tied to do, even by the same law of nature which originally gave them the power. And why then doth he say the multitude may change the kingdom into a democracy?

Thirdly, He concludes that, if there be a lawful cause, the multitude may change the kingdom. Here I would fain know who shall judge of this lawful cause? If the multitude — for I see nobody else can — then this is a pestilent and dangerous conclusion.

3. I come now to examine that argument which is used by Bellarmine, and is the one and only argument I can find produced by my author for the proof of the natural liberty of the people. It is thus framed: "That God hath given or ordained power, is evident by

Scripture; but God hath given it to no particular person, because by nature all men are equal, therefore he hath given power to the people or multitude."

To answer this reason, drawn from the equality of mankind by nature, I will first use the help of Bellarmine himself, whose very words are these: "If many men had been together created out of the earth, they all ought to have been princes over their posterity." In these words we have an evident confession that creation made man prince of his posterity. And indeed not only Adam, but the succeeding patriarchs had, by right of fatherhood, royal authority over their children. Nor dares Bellarmine deny this also. That the patriarchs, saith he, were endowed with kingly power, their deeds do testify; for as Adam was lord of his children, so his children under him had a command and power over their own children, but still with subordination to the first parent, who is lord-paramount over his children's children to all generations, as being the grandfather of his people.

4. I see not then how the children of Adam, or of any man else, can be free from subjection to their parents. And this subjection of children being the fountain of all regal authority, by the ordination of God himself; it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parents, which quite takes away that new and common distinction which refers only power universal and absolute to God, but power respective in regard of the special form of government to the choice of the people.

This lordship which Adam by command had over the whole world, and by right descending from him the patriarchs did enjoy, was as large and ample as the absolutest dominion of any monarch which hath been since the creation. For dominion of life and death we find that Judah, the father, pronounced sentence of death against Tamar, his daughter-in-law, for playing the harlot. "Bring her forth," saith he, "that she may be burnt." Touching war, we see that Abraham commanded an army of three hundred and eighteen soldiers of his own family. And Esau met his brother Jacob with four hundred men at arms. For matter of peace, Abraham made a league with Abimelech, and ratified the articles with an oath. These acts of judging in capital crimes, of making war, and concluding peace, are the chiefest marks of "sovereignty" that are found in any monarch.

5. Not only until the Flood, but after it, this patriarchal power did continue, as the very name patriarch doth in part prove. The three sons of Noah had the whole world divided amongst them by their father; for of them was the whole world overspread, according to the benediction given to him and his sons: "Be fruitful and multiply, and replenish the earth." Most of the civilst nations of the earth labour to fetch their original from some one of the sons or nephews of Noah, which were scattered abroad after the confusion of Babel. In this dispersion we must certainly find the establishment of regal power throughout the kingdoms of the world.

It is a common opinion that at the confusion of tongues there were seventy-two distinct nations erected, all which were not confused multitudes, without heads or governors, and at liberty to choose what governors or government they pleased, but they were distinct families, which had fathers for rulers over them, whereby it appears that even in the confusion God was careful to preserve the fatherly authority by distributing the diversity of languages according to the diversity of families, for so plainly it appears by the text. First, after the enumeration of the sons of Japhet, the conclusion is: "By these were the isles of the Gentiles divided in their lands, every one after his tongue, after their families, in their nations." So it is said: "These are the sons of Ham, after their families, after their tongues, in their countries, and in their nations." The like we read: "These are the sons of Shem, after their families, after their tongues, in their lands, after their nations. These are the families of the sons of Noah after their generations in their nations, and by these were these nations divided in the earth after the Flood."

In this division of the world, some are of opinion that Noah used lots for the distribution of it; others affirm he sailed about the Mediterranean Sea in ten years and, as he went about, appointed to each son his part, and so made the division of the then known world into Asia, Africa, and Europe, according to the number of his sons, the limits of which three parts are all found in that Midland Sea.

6. But howsoever the manner of this division be uncertain, yet it is most certain the division itself was by families from Noah and his children, over which the parents were heads and princes.

Amongst these was Nimrod who, no doubt, as Sir Walter Raleigh affirms, was by good right lord or king over his family; yet against

right did he enlarge his empire by seizing violently on the rights of other lords of families; and in this sense he may be said to be the author and first founder of monarchy. And all those that do attribute unto him the original regal power do hold he got it by tyranny or usurpation, and not by any due election of the people or multitude, or by any faction with them.

As this patriarchal power continued in Abraham, Isaac, and Jacob, even until the Egyptian bondage, so we find it amongst the sons of Ishmael and Esau. It is said, "These are the sons of Ishmael, and these are their names by their castles and towns, twelve princes of their tribes and families. And these are the names of the dukes that came of Esau, according to their families and their places by their nations."

7. Some, perhaps, may think that these princes and dukes of families were but some petty lords under some greater kings, because the number of them are so many that their particular territories could be but small and not worthy the title of kingdoms; but they must consider that at first kings had no such large dominions as they have nowadays. We find in the time of Abraham, which was about three hundred years after the Flood, that in a little corner of Asia nine kings at once met in battle, most of which were but kings of cities apiece, with the adjacent territories, as of Sodom, Gomorrrha, Shinar, etc. In the same chapter is mention of Melchisedek, king of Salem, which was but the city of Jerusalem. And in the catalogue of the kings of Edom, the names of each king's city is recorded, as the only mark to distinguish their dominions. In the land of Canaan, which was but a small circuit, Joshua destroyed thirty-one kings, and about the same time Adonibesek had seventy kings whose hands and toes he had cut off, and made them feed under his table.¹ A few years after this, thirty-two kings came to Benhadad, king of Syria, and about seventy kings of Greece went to the wars of Troy. Cæsar found more kings in France than there be now princes there, and at his sailing over into this island he found four kings in our county of Kent. These heaps of kings in each nation are an argument their territories were but small, and strongly confirms our assertion that erection of kingdoms came at first only by distinction of families.

By manifest footsteps we may trace this paternal government unto

¹ 1 Kings xx. 16.

the Israelites coming into Egypt, where the exercise of supreme patriarchal jurisdiction was intermitted because they were in subjection to a stronger prince. After the return of these Israelites out of bondage, God, out of a special care of them, chose Moses and Joshua successively to govern as princes in the place and stead of the supreme fathers; and after them likewise for a time He raised up judges to defend His people in time of peril. But when God gave the Israelites kings, He re-established the ancient and prime right of lineal succession to paternal government. And whensoever He made choice of any special person to be king, He intended that the issue also should have benefit thereof, as being comprehended sufficiently in the person of the father, although the father only was named in the grant.

8. It may seem absurd to maintain that kings now are the fathers of their people, since experience shows the contrary. It is true, all kings be not the natural parents of their subjects, yet they all either are, or are to be reputed, the next heirs to those first progenitors who were at first the natural parents of the whole people, and in their right succeed to the exercise of supreme jurisdiction; and such heirs are not only lords of their own children, but also of their brethren, and all others that were subject to their fathers. And therefore we find that God told Cain of his brother Abel, "His desires shall be subject unto thee, and thou shalt rule over him." Accordingly, when Jacob bought his brother's birthright, Isaac blessed him thus: "Be lord over thy brethren, and let the sons of thy mother bow before thee." ²

As long as the first fathers of families lived, the name of patriarchs did aptly belong unto them; but after a few descents, when the true fatherhood itself was extinct, and only the right of the father descends to the true heir, then the title of prince or king was more significant to express the power of him who succeeds only to the right of that fatherhood which his ancestors did naturally enjoy. By this means it comes to pass that many a child, by succeeding a king, hath the right of a father over many a greyheaded multitude, and hath the title of *Pater Patriae*.

9. It may be demanded what becomes of the right of fatherhood in case the Crown does escheat for want of an heir, whether doth it not then devolve to the people? The answer is: It is but the negligence

² Gen. xxvii. 29.

or ignorance of the people to lose the knowledge of the true heir, for an heir there always is. If Adam himself were still living, and now ready to die, it is certain that there is one man, and but one in the world, who is next heir, although the knowledge who should be that one man be quite lost.

(2.) This ignorance of the people being admitted, it doth not by any means follow that, for want of heirs, the supreme power is devolved to the multitude, and that they have power to rule and choose what rulers they please. No, the kingly power escheats in such cases to the princes and independent heads of families, for every kingdom is resolved into those parts whereof at first it was made. By the uniting of great families or petty kingdoms, we find the greater monarchies were at the first erected; and into such again, as into their first matter, many times they return again. And because the dependency of ancient families is oft obscure or worn out of knowledge, therefore the wisdom of all or most princes have thought fit to adopt many times those for heads of families and princes of provinces whose merits, abilities, or fortunes have ennobled them, or made them fit and capable of such regal favours. All such prime heads and fathers have power to consent in the uniting or conferring of their fatherly right of sovereign authority on whom they please; and he that is so elected claims not his power as a donative from the people, but as being substituted properly by God, from whom he receives his royal charter of an universal father, though testified by the ministry of the heads of the people.

If it please God, for the correction of the prince or punishment of the people, to suffer princes to be removed and others to be placed in their rooms, either by the factions of the nobility or rebellion of the people, in all such cases the judgment of God, who hath power to give and to take away kingdoms, is most just; yet the ministry of men who execute God's judgments without commission is sinful and damnable. God doth but use and turn men's unrighteous acts to the performance of His righteous decrees.

10. In all kingdoms or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to the crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever, or whether some few or a multitude govern the commonwealth, yet

still the authority that is in any one, or in many, or in all these, is the only right and natural authority of a supreme father. There is and always shall be continued to the end of the world a natural right of a supreme father over every multitude, although, by the secret will of God, many at first do most unjustly obtain the exercise of it.

To confirm this natural right of regal power, we find in the Decalogue that the law which enjoins obedience to kings is delivered in the terms of "Honour thy father," as if all power were originally in the father. If obedience to parents be immediately due by a natural law, and subjection to princes but by the mediation of a human ordinance, what reason is there that the laws of nature should give place to the laws of men, as we see the power of the father over his child gives place and is subordinate to the power of the magistrate?

If we compare the natural rights of a father with those of a king, we find them all one, without any difference at all but only in the latitude or extent of them: as the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct, and defend the whole commonwealth. His war, his peace, his courts of justice, and all his acts of sovereignty, tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people.

CHAPTER II

IT IS UNNATURAL FOR THE PEOPLE TO GOVERN OR CHOOSE GOVERNORS

1. By conferring these proofs and reasons, drawn from the authority of the Scripture, it appears little less than a paradox which Bellarmine and others affirm of the freedom of the multitude, to choose what rulers they please.

Had the patriarchs their power given them by their own children? Bellarmine does not say it, but the contrary. If then the fatherhood enjoyed this authority for so many ages by the law of nature, when

was it lost, or when forfeited, or how is it devolved to the liberty of the multitude?

Because the Scripture is not favourable to the liberty of the people, therefore many fly to natural reason, and to the authority of Aristotle. I must crave liberty to examine or explain the opinion of this great philosopher; but briefly, I find this sentence in the third of his *Politics*, chap. 16: δοκεῖ δέ τισιν οὐδὲ κατὰ φύσιν εἶναι τὸ κύριον ἓνα πάντων εἶναι τῶν πολιτῶν, ὅπου συνέστηκεν ἐξ ὁμοίων ἢ πόλις. It seems to some not to be natural for one man to be lord of all the citizens, since a city consists of equals. D. Lambine, in his Latin interpretation of this text, hath omitted the translation of this word *τισιν*; by this means he maketh that to be the opinion of Aristotle, which Aristotle allegeth to be the opinion but of some. This negligence, or wilful escape, of Lambine, in not translating a word so material, hath been an occasion to deceive many who, looking no further than this Latin translation, have concluded, and made the world now of late believe, that Aristotle here maintains a natural equality of men; and not only our English translator of Aristotle's *Politics* is, in this place, misled by following Lambine, but even the learned Monsieur Duvall, in his *Synopsis*, bears them company; and yet this version of Lambine's is esteemed the best, and printed at Paris, with Causabon's corrected Greek copy, though in the rendering of this place the elder translations have been more faithful; and he that shall compare the Greek text with the Latin shall find that Causabon had just cause in his preface to Aristotle's works to complain that the best translations of Aristotle did need correction. To prove that in these words, which seem to favour the equality of mankind, Aristotle doth not speak according to his own judgment, but recites only the opinion of others, we find him clearly deliver his own opinion that the power of government did originally arise from the right of fatherhood, which cannot possibly consist with that natural equality which men dream of; for in the first of his *Politics* he agrees exactly with the Scripture, and lays this foundation of government:

The first society made of many houses is a village, which seems most naturally to be a colony of families or foster-brethren of children and children's children. And, therefore, at the beginning, cities were under the government of kings, for the eldest in every house is king. And so for kindred sake it is in colonies.

And in the fourth of his *Politics*, chap. 2, he gives the title of the first and divinest sort of government to the institution of kings, by defining tyranny to be a digression from the first and divinest.

Whosoever weights advisedly these passages will find little hope of natural reason in Aristotle to prove the natural liberty of the multitude. Also before him the divine Plato concludes a commonweal to be nothing else but a large family. I know for this position Aristotle quarrels with his master, but most unjustly; for therein he contradicts his own principles, for they both agree to fetch the original of civil government from the prime government. No doubt but Moses' history of the creation guided these two philosophers in finding out of this lineal subjection deduced from the laws of the first parents, according to that rule of St. Chrysostom: "God made all mankind of one man, that he might teach the world to be governed by a king, and not by a multitude."

The ignorance of the Creation occasioned several errors amongst the heathen philosophers. Polybius, though otherwise a most profound philosopher and judicious historian, yet here he stumbles; for in searching out the original of civil societies, he conceived that multitudes of men after a deluge, a famine, or a pestilence, met together like herds of cattle without any dependency, until the strongest bodies and boldest minds got the mastery of their fellows, "even as it is," saith he, "among bulls, bears, and cocks."

And Aristotle himself, forgetting his first doctrine, tells us the first heroical kings were chosen by the people for their deserving well of the multitude, either by teaching them some new arts, or by warring for them, or by gathering them together, or by dividing land amongst them; also Aristotle had another fancy that those men who prove wise of mind were by nature intended to be lords and govern; and those which were strong of body were ordained to obey, and to be servants. But this is a dangerous and uncertain rule, and not without some folly; for if a man prove both wise and strong, what will Aristotle have done with him? As he was wise, he could be no servant, and as he had strength, he could not be a master; besides, to speak like a philosopher, nature intends all things to be perfect both in wit and strength. The folly or imbecility proceeds from some error in generation or education; for nature aims at perfection in all her works.

2. Suarez, the Jesuit, riseth up against the royal authority of Adam,

in defence of the freedom and liberty of the people, and thus argues:

By right of creation Adam had only economical power, but not political. He had a power over his wife, and a fatherly power over his sons, whilst they were not made free. He might also, in process of time, have servants and a complete family, and in that family he might have complete economical power. But after that families began to be multiplied, and men to be separated and become the heads of several families, they had the same power over their families. But political power did not begin until families began to be gathered together into one perfect community; wherefore, as the community did not begin by the creation of Adam, nor by his will alone, but of all them which did agree in this community, so we cannot say that Adam naturally had political primacy in that community; for that cannot be gathered by any natural principles, because by the force of the law of nature alone it is not due unto any progenitor to be also king of his posterity. And if this be not gathered out of the principles of nature, we cannot say God by a special gift or providence gave him this power, for there is no revelation of this, nor testimony of Scripture — Hitherto Suarez.

Whereas he makes Adam to have a "fatherly power" over his sons, and yet shuts up this power within one family, he seems either to imagine that all Adam's children lived within one house and under one roof with their father, or else, as soon as any of his children lived out of his house, they ceased to be subject and did thereby become free. For my part I cannot believe that Adam, although he were sole monarch of the world, had any such spacious palace as might contain any such considerable part of his children. It is likelier that some mean cottage or tent did serve him to keep his court in. It were hard he should lose part of his authority because his children lay not within the walls of his house. But if Suarez will allow all Adam's children to be of his family, howsoever they were separate in dwellings, if their habitations were either contiguous or at such distance as might easily receive his fatherly commands; and that all that were under his commands were of his family, although they had many children or servants married, having themselves also children, then I see no reason but that we may call Adam's family a commonwealth, except we will wrangle about words, for Adam, living nine hundred and thirty years, and seeing seven or eight descents from himself, he might live to command of his children and their posterity a multitude far bigger than many commonwealths and kingdoms.

3. I know the politicians and civil lawyers do not agree well about the definition of a family, and Bodin¹ doth seem in one place to confine it to a house; yet in his definition he doth enlarge his meaning to all persons under the obedience of one and the same head of the family, and he approves better of the propriety of the Hebrew word for a family which is derived from a word that signifies a head, a prince, or lord, than the Greek word for a family which is derived from *oikos*, which signifies a house. Nor doth Aristotle confine a family to one house, but esteems it to be made of those that daily converse together; whereas, before him, Charondas called a family *homosypioi*, those that feed together out of one common pannier. And Epimenides the Cretian terms a family *homocapnoi*, those that sit by a common fire or smoke. But let Suarez understand what he please by Adam's family, if he will but confess, as he needs must, that Adam and the patriarchs had absolute power of life and death, of peace and war, and the like, within their houses or families, he must give us leave, at least, to call them kings of their houses or families; and if they be so by the law of nature, what liberty will be left to their children to dispose of?

Aristotle gives the lie to Plato and those that say political and economical societies are all one and do not differ *specie*, but only *multitudine* and *paucitate*, as if there were no difference betwixt a great house and a little city. All the argument I find he brings against them is this:

The community of man and wife differs from the community of master and servant, because they have several ends. The intention of nature, by conjunction of male and female, is generation; but the scope of master and servant is preservation, so that a wife and a servant are by nature distinguished, because nature does not work like the cutlers of Delphos, for she makes but one thing for one use. If we allow this argument to be sound, nothing doth follow but only this: that conjugal and despotical communities do differ. But it is no consequence that therefore economical and political societies do the

¹John Bodin (1530-1596) was a *politique*, and one of a group of Catholic Frenchmen who believed that the unity and welfare of the state should not be sacrificed on behalf of the church. He is most famous for his *Six Livres de la République* (1577) in which he expounded the doctrine of monarchical sovereignty and developed the first major systematic treatment of politics since Aristotle.]

like; for though it prove a family to consist of two distinct communities, yet it follows not that a family and a commonwealth are distinct, because, as well in the commonweal as in the families, both these communities are found.²

And as this argument comes not home to our point, so it is not able to prove that title which it shows for; for if it should be granted — which yet is false — that generation and preservation differ about the *individuum*, yet they agree in the general, and serve both for the conservation of mankind; even as several servants differ in the particular ends or offices, as one to brew and another to bake, yet they agree in the general preservation of the family. Besides, Aristotle confesses that amongst the barbarians — as he calls all them that are not Grecians — a wife and a servant are the same, because by nature no barbarian is fit to govern. It is fit the Grecians should rule over the barbarians; for by nature a servant and a barbarian is all one. Their family consists only of an ox for a man-servant and a wife for a maid; so they are fit only to rule their wives and their beasts. Lastly, Aristotle, if it had pleased him, might have remembered that nature doth not always make one thing but for one use. He knows the tongue serves both to speak and to taste.

4. But to leave Aristotle and return to Suarez. He saith that Adam had fatherly power over his sons whilst they were not made free. Here I could wish that the Jesuit had taught us how and when sons become free; I know no means by the law of nature. It is the favour, I think, of the parents only, who when their children are of age and discretion to ease their parents of part of their fatherly care, are then content to remit some part of their fatherly authority. Therefore the custom of some countries doth in some cases enfranchise the children of inferior parents, but many nations have no such custom, but, on the contrary, have strict laws for the obedience of children. The judicial law of Moses giveth full power to the father to stone his disobedient son so it be done in presence of a magistrate, and yet it did not belong to the magistrate to inquire and examine the justness of the cause, but it was so decreed lest the father should in his anger suddenly or secretly kill his son.

Also by the laws of the Persians and of the people of the Upper

² Aristotle, *Politics*, Bk. i. chap. 2.

Asia and of the Gauls, and by the laws of the West Indies, the parents have power of life and death over their children.

The Romans, even in their most popular estate, had this law in force, and this power of parents was ratified and amplified by the laws of the Twelve Tables, to the enabling of parents to sell their children two or three times over. By the help of the fatherly power Rome long flourished, and oftentimes was freed from great dangers. The fathers have drawn out of the very assemblies their own sons when, being tribunes, they have published laws tending to sedition.

Memorable is the example of Cassius, who threw his son headlong out of the Consistory publishing the law *Agaria* for the division of lands in the behoof of the people, and afterwards, by his own private judgment, put him to death by throwing him down from the Tarpeian Rock, the magistrates and people standing thereat amazed and not daring to resist his fatherly authority, although they would with all their hearts have had that law for the division of land — by which it appears it was lawful for the father to dispose of the life of his child contrary to the will of the magistrates or people. The Romans also had a law that what the children got was not their own but their father's, although Solon made a law which acquitted the son from nourishing of his father if his father had taught him no trade whereby to get his living.

Suarez proceeds, and tells us that in process of time Adam had complete economical power. I know not what this complete economical power is, nor how or what it doth really and essentially differ from political. If Adam did or might exercise the same jurisdiction which a king doth now in a commonwealth, then the kinds of power are not distinct, and though they may receive an accidental difference by the amplitude or extent of the bounds of the one beyond the other, yet since the like difference is also found in political estates, it follows that economical and political power differ no otherwise than a little commonweal differs from a great one. Next, saith Suarez, community did not begin at the creation of Adam. It is true, because he had nobody to communicate with; yet community did presently follow his creation, and that by his will alone, for it was in his power only who was lord of all to appoint what his sons should have in proper and what in common; so that propriety and community of goods did follow originally from him, and it is the duty of a father to pro-

vide as well for the common good of his children as the particular.

Lastly, Suarez concludes that by the law of nature alone it is not due unto any progenitor to be also king of his posterity. This assertion is confuted point-blank by Bellarmine, who expressly affirmeth that the first parents ought to have been princes of their posterity. And until Suarez bring some reason for what he saith, I shall trust more to Bellarmine's proofs than to his denials.

5. But let us condescend a while to the opinion of Bellarmine and Suarez, and all those who place supreme power in the whole people, and ask them if their meaning be that there is but one and the same power in all the people of the world, so that no power can be granted except all the men upon the earth meet and agree to choose a governor.

An answer is here given by Suarez, that it is scarce possible nor yet expedient that all men in the world should be gathered together into one community. It is likelier that either never or for a very short time that this power was in this manner in the whole multitude of men collected, but a little after the creation men began to be divided into several commonwealths, and this distinct power was in each of them.

This answer of "scarce possible nor yet expedient"—it is likelier begets a new doubt how this distinct power comes to each particular community when God gave it to the whole multitude only, and not to any particular assembly of men. Can they show or prove that ever the whole multitude met and divided this power which God gave them in gross by breaking into parcels and by appointing a distinct power to each several commonwealth? Without such a compact I cannot see — according to their own principles — how there can be any election of a magistrate by any commonwealth, but by a mere usurpation upon the privilege of the whole world. If any think that particular multitudes at their own discretion had power to divide themselves into several commonwealths, those that think so have neither reason nor proof for so thinking, and thereby a gap is opened for every petty factious multitude to raise a new commonwealth, and to make more commonweals than there be families in the world. But let this also be yielded them, that in each particular commonwealth there is a distinct power in the multitude. Was a general meeting of a whole kingdom ever known for the election of a prince? Is there any example of it ever found in the whole world? To conceit such a thing is to

imagine little less than an impossibility, and so by consequence no one form of government or king was ever established according to this supposed law of nature.

6. It may be answered by some that if either the greatest part of a kingdom, or if a smaller part only by themselves, and all the rest by proxy, or if the part not concurring in election do after, by a tacit assent, ratify the act of others, that in all these cases it may be said to be the work of the whole multitude.

As to the acts of the major part of a multitude, it is true that by politic human constitutions it is oft ordained that the voices of the most shall overrule the rest; and such ordinances bind, because where men are assembled by a human power, that power that doth assemble them can also limit and direct the manner of the execution of that power, and by such derivative power, made known by law or custom, either the greater part, or two thirds, or three parts of five, or the like, have power to oversway the liberty of their opposites. But in assemblies that take their authority from the law of nature, it cannot be so; for what freedom or liberty is due to any man by the law of nature no inferior power can alter, limit or diminish; no one man nor a multitude can give away the natural right of another. The law of nature is unchangeable, and howsoever one man may hinder another in the use or exercise of his natural right, yet thereby no man loseth the right of itself; for the right and the use of the right may be distinguished, as right and possession are oft distinct. Therefore, unless it can be proved by the law of nature that the major or some other part have power to overrule the rest of the multitude, it must follow that the acts of multitudes not entire are not binding to all but only to such as consent unto them.

7. As to the point of proxy, it cannot be shown or proved that all those that have been absent from popular elections did ever give their voices to some of their fellows. I ask but one example out of the history of the whole world: let the commonweal be but named wherever the multitude or so much as the greatest part of it consented, either by voice or by procuration, to the election of a prince. The ambition sometimes of one man, sometimes of many, or the faction of a city or citizens, or the mutiny of an army, hath set up or put down princes; but they have never tarried for this pretended order by proceeding of the whole multitude.

Lastly, if the silent acceptation of a governor by part of the people be an argument of their concurring in the election of him, by the same reason the tacit assent of the whole commonwealth may be maintained; from whence it follows that every prince that comes to a crown, either by succession, conquest, or usurpation, may be said to be elected by the people, which inference is too ridiculous; for in such cases the people are so far from the liberty of specification that they want even that of contradiction.

8. But it is in vain to argue against the liberty of the people in the election of kings, as long as men are persuaded that examples of it are to be found in Scripture. It is fit, therefore, to discover the grounds of this error. It is plain by an evident text that it is one thing to choose a king, and another thing to set up a king over the people; this latter power the children of Israel had, but not the former. This distinction is found most evident in Deut. xvii. 15, where the law of God saith: "Him shalt thou set king over thee whom the Lord shall choose"; so God must *eligere*, and the people only do *constituere*. Mr. Hooker, in his eighth Book of *Ecclesiastical Policy*, clearly expounds this distinction; the words are worthy the citing:

Heaps of Scripture are alleged concerning the solemn coronation or inauguration of Saul, David, Solomon, and others, by nobles, ancients, and the people of the commonwealth of Israel; as if these solemnities were a kind of deed, whereby the right of dominion is given, which strange, untrue, and unnatural conceits are set abroad by seedmen of rebellion, only to animate unquiet spirits, and to feed them with possibilities of aspiring unto the thrones, if they can win the hearts of the people, whatsoever hereditary title any other before them may have. I say these unjust and insolent positions I would not mention were it not thereby to make the countenance of truth more orient. For unless we will openly proclaim defiance unto all law, equity, and reason, we must — for there is no other remedy — acknowledge that in kingdoms hereditary, birthright giveth right unto sovereign dominion, and the death of the predecessor putteth the successor by blood in seisin. Those public solemnities before-mentioned do either serve for an open testification of the inheritor's right, or belong to the form of inducing of him into possession of that thing he hath right unto.

This is Mr. Hooker's judgment of the Israelites' power to set a king over themselves. No doubt but if the people of Israel had had power to choose their king, they would never have made choice of

Joas, a child but of seven years old, nor of Manasses, a boy of twelve; since, as Solomon saith, "Woe to the land whose king is a child." Nor is it probable they would have elected Josias, but a very child and a son to so wicked and idolatrous a father, as that his own servants murdered him; and yet all the people set up this young Josias, and slew the conspirators of the death of Ammon, his father, which justice of the people God rewarded by making this Josias the most religious king that ever that nation enjoyed.

9. Because it is affirmed that the people have power to choose as well what form of government as what governors they please, of which mind is Bellarmine in those places we cited at first. Therefore it is necessary to examine the strength of what is said in defence of popular commonwealths against this natural form of kingdoms which I maintained. Here I must first put the Cardinal in mind of what he affirms in cold blood in other places, where he saith: "God, when he made all mankind of one man, did seem openly to signify that he rather approved the government of one man than of many." Again, God showed his opinion when he endued, not only men, but all creatures with a natural propensity to monarchy; neither can it be doubted but a natural propensity is to be referred to God, who is author of nature. And again, in a third place, what form of government God confirmed by his authority may be gathered by that commonweal which he instituted amongst the Hebrews, which was not aristocratical, as Calvin saith, but plainly monarchical.

10. Now, if God, as Bellarmine saith, hath taught us by natural instinct, signified to us by the Creation, and confirmed by His own example, the excellency of monarchy, why should Bellarmine or we doubt but that it is natural? Do we not find that in every family the government of one alone is most natural? God did always govern his own people by monarchy only. The patriarchs, dukes, judges, and kings were all monarchs. There is not in all the Scripture mention of approbation of any other form of government. At the time when Scripture saith: "There was no king in Israel, but that every man did that which was right in his own eyes", even then the Israelites were under the kingly government of the fathers of particular families; for, in the consultation after the Benjamitical war for providing wives for the Benjamites, we find the elders of the congregation bear only sway (Judges xxi. 16). To them also were complaints to be made, as

appears by verse 22. And though mention be made of all the children of Israel, all the congregation, and all the people, yet by the term of "all" the Scripture means only all the fathers, and not all the whole multitude, as the text plainly expounds itself in 2 Chron. i. 2, where Solomon speaks unto all Israel, to the captains, the judges, and to every governor, the chief of the fathers, so the elders of Israel are expounded to be the chief of the fathers of the children of Israel (1 Kings viii. 12; 2 Chron. vs. 2).

At that time also, when the people of Israel begged a king of Samuel, they were governed by kingly power. God, out of a special love and care to the house of Israel, did choose to be their King Himself, and did govern them at that time by His Viceroy Samuel and his sons, and therefore God tells Samuel: "They have not rejected thee but Me, that I should not reign over them." It seems they did not like a king by deputation but desired one by succession like all the nations. All nations belike had kings then, and those by inheritance, not by election; for we do not find the Israelites prayed that they themselves might choose their own king. They dream of no such liberty, and yet they were the elders of Israel gathered together. If other nations had elected their own kings, no doubt but they would have been as desirous to have imitated other nations as well in the electing as in the having of a king.

Aristotle, in his book of *Politics*, when he comes to compare the several kinds of government, he is very reserved in discoursing what form he thinks best: he disputes subtilly to and fro of many points, and judiciously of many errors, but concludes nothing himself. In all those books I find little commendation of monarchy. It was his hap to live in those times when the Grecians abounded with several commonwealths, who had then learning enough to make them seditious. Yet in his *Ethics*, he hath so much good manners as to confess in right down words that "Monarchy is the best form of government, and a popular estate the worst." And though he be not so free in his politics, yet the necessity of truth hath here and there extorted from him that which amounts no less to the dignity of monarchy; he confesseth it to be, first, the natural and the divinest form of government; and that the gods themselves did live under a monarchy. What can a heathen say more?

Indeed, the world for a long time knew no other sort of government

but only monarchy. The best order, the greatest strength, the most stability, and easiest government are to be found all in monarchy, and in no other form of government. The new platforms of commonweals were first hatched in a corner of the world, amongst a few cities of Greece, which have been imitated by very few other places. Those very cities were first, for many years, governed by kings, until wantonness, ambition, or faction of the people, made them attempt new kinds of regimen; all which mutations proved most bloody and miserable to the authors of them — happy in nothing but that they continued but a small time.

11. A little to manifest the imperfection of popular government, let us but examine the most flourishing democracy that the world hath ever known — I mean that of Rome. First, for the durability: at the most it lasted but four hundred and eighty years; for so long it was from the expulsion of Tarquin to Julius Caesar, whereas both the Assyrian monarchy lasted without interruption at the least twelve hundred years, and the empire of the East continued one thousand four hundred and ninety-five years.

Secondly, For the order of it, during these four hundred and eighty years, there was not any one settled form of government in Rome; for after they had once lost the natural power of kings, they could not find upon what form of government to rest. Their fickleness is an evidence that they found things amiss in every change. At the first they chose two annual consuls instead of kings. Secondly, those did not please them long, but they must have tribunes of the people to defend their liberty. Thirdly, they leave tribunes and consuls, and choose them ten men to make them laws. Fourthly, they call for consuls and tribunes again, sometimes they choose dictators, which were temporary kings, and sometimes military tribunes, who had consular power. All these shiftings caused such notable alteration in the government, as it passeth historians to find out any perfect form of regimen in so much confusion; one while the Senate made laws, another while the people. The dissensions which were daily between the Nobles and the Commons bred those memorable seditions about usury, about marriages, and about magistracy. Also the Grecian, the Apulian, and the Drusian seditions filled the market places, the temples, and the Capitol itself, with blood of the citizens; the Social War was plainly civil; the wars of the slaves, and the other of the fencers; the civil

wars of Marius and Sylla, of Cataline, of Cæsar, and Pompey the Triumvirate, of Augustus, Lepidus, and Antonius — all these shed an ocean of blood within Italy and the streets of Rome.

Thirdly, For their government, let it be allowed that for some part of this time it was popular, yet it was popular as to the city of Rome only, and not as to the dominions or the whole empire of Rome; for no democracy can extend further than to one city. It is impossible to govern a kingdom, much less many kingdoms, by the whole people or by the greatest part of them.

12. But you will say, yet the Roman empire grew all up under this kind of popular government, and the city became mistress of the world. It is not so; for Rome began her empire under kings, and did perfect it under emperors; it did only increase under that popularity. Her greatest exaltation was under Trajan, as her longest peace had been under Augustus. Even at those times when the Roman victories abroad did amaze the world, then the tragical slaughter of citizens at home deserved commiseration from their vanquished enemies. What though in that age of her popularity she bred many admired captains and commanders — each of which was able to lead an army, though many of them were but ill requited by the people — yet all of them were not able to support her in times of danger; but she was forced in her greatest troubles to create a dictator, who was a king for a time, thereby giving this honourable testimony of monarchy that the last refuge in perils of states is to fly to regal authority. And though Rome's popular estate for a while was miraculously upheld in glory by a greater prudence than her own, yet in a short time, after manifold alterations, she was ruined by her own hands: *suis et ipsa Roma viribus ruit*; for the arms she had prepared to conquer other nations were turned upon herself, and civil contentions at last settled the government again into a monarchy.

13. The vulgar opinion is that the first cause why the democratical government was brought in was to curb the tyranny of monarchies. But the falsehood of this doth best appear by the first flourishing popular estate of Athens, which was founded, not because of the vices of their last king, but that his virtuous deserts were such as the people thought no man worthy enough to succeed him — a pretty wanton quarrel to monarchy! For when their king Codrus understood by the oracle that his country could not be saved unless the king were

slain in the battle, he in disguise entered his enemy's camp and provoked a common soldier to make him a sacrifice for his own kingdom, and with his death ended the royal government; for after him was never any more kings of Athens. As Athens thus for love of her Codrus changed the government, so Rome, on the contrary, out of hatred to her Tarquin did the like. And though these two famous commonweals did for contrary causes abolish monarchy, yet they both agreed in this, that neither of them thought it fit to change their state into a democracy; but the one chose archontes, and the other consuls, to be their governors; both which did most resemble kings, and continued until the people, by lessening the authority of these their magistrates, did by degrees and stealth bring in their popular government. And I verily believe never any democratical state showed itself at first fairly to the world by any elective entrance, but they all secretly crept in by the back-door of sedition and faction.

14. If we will listen to the judgment of those who should best know the nature of popular government, we shall find no reason for good men to desire or choose it. Xenophon, that brave scholar and soldier, disallowed the Athenian commonweal for that they followed that form of government wherein the wicked are always in greatest credit, and virtuous men kept under. They expelled Aristides the Just; Themistocles died in banishment; Miltiades in prison; Phocion, the most virtuous and just man of his age, though he had been chosen forty-five times to be their general, yet he was put to death with all his friends, kindred, and servants, by the fury of the people, without sentence, accusation, or any cause at all. Nor were the people of Rome much more favourable to their worthies. They banished Rutilius, Metellus, Coriolanus, the two Scipios, and Tully. The worst men sped best; for as Xenophon saith of Athens, so Rome was a sanctuary for all turbulent, discontented, and seditious spirits. The impunity of wicked men was such that upon pain of death it was forbidden all magistrates to condemn to death or banish any citizen, or to deprive him of his liberty, or so much as to whip him, for what offence soever he had committed, either against the gods or men.

The Athenians sold justice as they did other merchandise, which made Plato call a popular estate a fair, where everything is to be sold. The officers, when they entered upon their charge, would brag they went to a golden harvest. The corruption of Rome was such that

Marius and Pompey durst carry bushels of silver into the assemblies to purchase the voices of the people. Many citizens under their grave gowns came armed into their public meetings, as if they went to war. Often contrary factions fell to blows, sometimes with stones, and sometimes with swords. The blood hath been sucked up in the market places with sponges; the river Tiber hath been filled with the dead bodies of the citizens, and the common privies stuffed full with them.

If any man think these disorders in popular states were but casual, or such as might happen under any kind of government, he must know that such mischiefs are unavoidable and of necessity do follow all democratical regimens; and the reason is given, because the nature of all people is to desire liberty without restraint, which cannot be but where the wicked bear rule; and if the people should be so indiscreet as to advance virtuous men, they lose their power; for that good men would favour none but the good, which are always the fewer in number, and the wicked and vicious — which is still the greatest part of the people — should be excluded from all preferment, and in the end, by little and little, wise men should seize upon the state and take it from the people.

I know not how to give a better character of the people than can be gathered from such authors as lived amongst or near the popular states. Thucydides, Xenophon, Livy, Tacitus, Cicero, and Sallust have set them out in their colours. I will borrow some of their sentences:

There is nothing more uncertain than the people; their opinions are as variable and sudden as tempests; there is neither truth nor judgment in them; they are not led by wisdom to judge of anything, but by violence and rashness; nor put they any difference between things true and false. After the manner of cattle, they follow the herd that goes before; they have a custom always to favour the worst and the weakest; they are most prone to suspicions, and use to condemn men for guilty upon any false suggestion; they are apt to believe all news, especially if it be sorrowful; and, like Fame, they make it more in the believing; when there is no author, they fear those evils which themselves have feigned; they are most desirous of new stirs and changes, and are enemies to quiet and rest; whatsoever is giddy or headstrong, they account manlike and courageous; but whatsoever is modest or provident seems sluggish; each man hath a care of his particular, and thinks basely of the common good; they look upon approaching mischiefs as they do

upon thunder, only every man wisheth it may not touch his own person; it is the nature of them, they must serve basely or domineer proudly; for they know no mean.

Thus do they paint to the life this beast with many heads. Let me give you the cipher of their form of government: as it is begot by sedition, so it is nourished by arms; it can never stand without wars, either with an enemy abroad or with friends at home. The only means to preserve it is to have some powerful enemies near who may serve instead of a king to govern it, that so, though they have not a king amongst them, yet they may have as good as a king over them; for the common danger of an enemy keeps them in better unity than the laws they make themselves.

15. Many have exercised their wits in paralleling the inconveniences of regal and popular government; but if we will trust experience before speculations philosophical, it cannot be denied but this one mischief of sedition, which necessarily waits upon all popularity, weighs down all the inconveniences that can be found in monarchy, though they were never so many. It is said, "Skin for skin, yea, all that a man hath will he give for his life"; and a man will give his riches for the ransom of his life. The way then to examine what proportion the mischiefs of sedition and tyranny have one to another is to inquire in what kind of government most subjects have lost their lives. Let Rome, which is magnified for her popularity, and vilified for the tyrannical monsters, the emperors, furnish us with examples. Consider whether the cruelty of all the tyrannical emperors that ever ruled in this city did ever spill a quarter of the blood that was poured out in the last hundred years of her glorious commonwealth. The murders by Tiberius, Domitian, and Commodus, put all together, cannot match that civil tragedy which was acted in that one sedition between Marius and Sylla, nay, even by Sylla's part alone — not to mention the acts of Marius — were fourscore and ten senators put to death, fifteen consuls, two thousand and six hundred gentlemen, and a hundred thousand others.

This was the height of the Roman liberty; any man might be killed that would — a favour not fit to be granted under a royal government. The miseries of those licentious times are briefly touched by Plutarch in these words:

Sylla fell to shedding of blood, and filled all Rome with infinite and unspeakable murders. This was not only done in Rome, but in all the cities of Italy throughout there was no temple of any god whatsoever, no altar in anybody's house, no liberty of hospital, no father's house, which was not embued with blood and horrible murders; the husbands were slain in the wives' arms, and the children in the mothers' laps; and yet they that were slain for private malice were *nothing in respect of those that were murdered only for their goods*. . . . He openly sold their goods by the crier, sitting so proudly in his chair of state, that it grieved the people more to see their goods packed up by them to whom he gave or disposed them than to see them taken away. Sometimes he would give a whole country, or the whole revenues of certain cities, unto women for their beauties, or to pleasant jesters, minstrels, or wicked slaves made free. And to some he would give other men's wives by force, and make them be married against their wills.

Now let Tacitus and Suetonius be searched, and see if all their cruel emperors can match this popular villany in such an universal slaughter of citizens, or civil butchery. God only was able to match him, and over-matched him, by fitting him with a most remarkable death, just answerable to his life; for as he had been the death of many thousands of his countrymen, so as many thousands of his own kindred in the flesh were the death of him, for he died of an impostume which corrupted his flesh in such sort that it turned all to lice. He had many about him to shift him continually night and day; yet the lice they wiped from him were nothing to them that multiplied upon him; there was neither apparel, linen, baths, washings, nor meat itself, but was presently filled with swarms of this vile vermin. I cite not this to extenuate the bloody acts of any tyrannical princes, nor will I plead in defence of their cruelties; only in the comparative I maintain the mischiefs to a state to be less universal under a tyrant king; for the cruelty of such tyrants extends ordinarily no further than to some particular men that offend him, and not to the whole kingdom. It is truly said by his late Majesty King James: A king can never be so notoriously vicious but he will generally favour justice, and maintain some order, except in the particulars wherein his inordinate lust carries him away. Even cruel Domitian, Dionysius, the tyrant, and many others are commended by historians for great observers of justice. A natural reason is to be rendered for it. It is the multitude of people and the abundance of their riches which are the only strength and

glory of every prince. The bodies of his subjects do him service in war, and their goods supply his present wants; therefore, if not out of affection to his people, yet out of natural love to himself, every tyrant desires to preserve the lives and protect the goods of his subjects, which cannot be done but by justice, and if it be not done, the prince's loss is the greatest; on the contrary, in a popular state every man knows the public good doth not depend wholly on his care, but the commonwealth may well enough be governed by others though he tend only his private benefit, he never takes the public to be his own business. Thus, as in a family, where one office is to be done by many servants, one looks upon another, and every one leaves the business for his fellow until it is quite neglected by all; nor are they much to be blamed for their negligence, since it is an even wager their ignorance is as great. For magistrates among the people, being for the most part annual, do always lay down their office before they understand it; so that a prince of a duller understanding, by use and experience, must needs excel them. Again, there is no tyrant so barbarously wicked but his own reason and sense will tell him that though he be a god, yet he must die like a man; and that there is not the meanest of his subjects but may find a means to revenge himself of the injustice that is offered him. Hence it is that great tyrants live continually in base fears, as did Dionysius the elder; Tiberius, Caligula, and Nero are noted by Suetonius to have been frightened with panic fears. But it is not so where wrong is done to any particular person by a multitude. He knows not who hurt him, or who to complain of, or to whom to address himself for reparation. Any man may boldly exercise his malice and cruelty in all popular assemblies. There is no tyranny to be compared to the tyranny of a multitude.

r6. What though the government of the people be a thing not to be endured, much less defended, yet many men please themselves with an opinion that though the people may not govern, yet they may partake and join with a king in the government, and so make a state mixed of popular and regal power, which they take to be the best-tempered and equallest form of government. But the vanity of this fancy is too evident, it is a mere impossibility or contradiction; for if a king but once admit the people to be his companions, he leaves to be a king, and the state becomes a democracy; at least, he is but a titular and no real king that hath not the sovereignty to himself; for

the having of this alone, and nothing but this, makes a king to be a king. As for that show of popularity which is found in such kingdoms as have general assemblies for consultation about making public laws, it must be remembered that such meetings do not share or divide the sovereignty with the prince, but do only deliberate and advise their supreme head, who still reserves the absolute power in himself: for if in such assemblies the king, the nobility, and people have equal shares in the sovereignty, then the king hath but one voice, the nobility likewise one, and the people one, and then any two of these voices should have power to overrule the third; thus the nobility and commons together should have power to make a law to bind the king, which was never yet seen in any kingdom, but if it could, the state must needs be popular and not regal.

17. If it be unnatural for the multitude to choose their governors, or to govern or to partake in the government, what can be thought of that damnable conclusion which is made by too many that the multitude may correct or depose their prince if need be? Surely the unnaturalness and injustice of this position cannot sufficiently be expressed; for admit that a king make a contract or paction with his people, either originally in his ancestors or personally at his coronation — for both these pactions some dream of but cannot offer any proof for either — yet by no law of any nation can a contract be thought broken, except that first a lawful trial be had by the ordinary judge of the breakers thereof, or else every man may be both party and judge in his own case, which is absurd once to be thought, for then it will lie in the hands of the headless multitude when they please to cast off the yoke of government — that God hath laid upon them — to judge and punish him, by whom they should be judged and punished themselves. Aristotle can tell us what judges the multitude are in their own case, *πλείστοι φαῦλοι κριταὶ περὶ τῶν οἰκείων*. The judgment of the multitude in disposing of the sovereignty may be seen in the Roman history, where we may find many good emperors murdered by the people, and many bad elected by them. Nero, Heliogabalus, Otho, Vitellius, and such other monsters of nature, were the minions of the multitude and set up by them. Pertinax, Alexander, Severus, Gordianus, Gallus, Emilianus, Quintilius, Aurelianus, Tacitus, Probus, and Numerianus, all of them good emperors in the judgment of all historians, yet murdered by the multitude.

18. Whereas many out of an imaginary fear pretend the power of the people to be necessary for the repressing of the insolences of tyrants; wherein they propound a remedy far worse than the disease, neither is the disease indeed so frequent as they would have us think. Let us be judged by the history even of our own nation. We have enjoyed a succession of kings from the Conquest now for above six hundred years — a time far longer than ever yet any popular State could continue — we reckon to the number of twenty-six of these princes since the Norman race, and yet not one of these is taxed by our historians for tyrannical government. It is true, two of these kings have been deposed by the people and barbarously murdered, but neither of them for tyranny; for, as a learned historian of our age saith: "Edward II and Richard II were not insupportable either in their nature or rule, and yet the people, more upon wantonness than for any want, did take an unbridled course against them." Edward II by many of our historians is reported to be of a good and virtuous nature, and not unlearned; they impute his defects rather to fortune than either to counsel or carriage of his affairs. The deposition of him was a violent fury, led by a wife both cruel and unchaste, and can with no better countenance of right be justified than may his lamentable both indignities and death itself. Likewise the deposition of King Richard II was a tempestuous rage, neither led or restrained by any rules of reason or of state. Examine his actions without a distempered judgment, and you will not condemn him to be exceeding either insufficient or evil; weigh the imputations that were objected against him, and you shall find nothing either of any truth or of great moment. Hollingshed writeth:

That he was most unthankfully used by his subjects, for, although, through the frailty of his youth he demeaned himself more dissolutely than was agreeable to the royalty of his estate, yet in no king's days were the commons in greater wealth, the nobility more honoured, and the clergy less wronged, who, notwithstanding, in the evil-guided strength of their will, took head against him, to their own headlong destruction afterwards, partly during the reign of Henry, his next successor, whose greatest achievements were against his own people in executing those who conspired with him against King Richard. But more especially in succeeding times when, upon occasion of this disorder, more English blood was spent than was in all the foreign wars together which have been since the Conquest.

Twice hath this kingdom been miserably wasted with civil war, but neither of them occasioned by the tyranny of any prince. The cause of the Barons' wars is by good historians attributed to the stubbornness of the nobility, as the bloody variance of the houses of York and Lancaster, and the late rebellion sprang from the wantonness of the people. These three unnatural wars have dishonoured our nation amongst strangers, so that in the censures of kingdoms the King of Spain is said to be the king of men, because of his subjects' willing obedience; the King of France king of asses, because of their infinite taxes and impositions; but the King of England is said to be the king of devils, because of his subjects' often insurrections against and depositions of their princes.

CHAPTER III

POSITIVE LAWS DO NOT INFRINGE THE NATURAL AND FATHERLY POWER OF KINGS

1. HITHERTO I have endeavoured to show the natural institution of regal authority, and to free it from subjection to an arbitrary election of the people. It is necessary also to inquire whether human laws have a superiority over princes, because those that maintain the acquisition of royal jurisdiction from the people do subject the exercise of it to positive laws. But in this also they err; for as kingly power is by the law of God, so it hath no inferior law to limit it.

The father of a family governs by no other law than by his own will, not by the laws and wills of his sons or servants. There is no nation that allows children any action or remedy for being unjustly governed; and yet, for all this, every father is bound by the law of nature to do his best for the preservation of his family. But much more is a king always tied by the same law of nature to keep this general ground, that the safety of the kingdom be his chief law; he must remember that the profit of every man in particular, and of all together in general, is not always one and the same; and that the public is to be preferred before the private; and that the force of laws must not be so great as natural equity itself, which cannot fully be

comprised in any laws whatsoever, but is to be left to the religious achievement of those who know how to manage the affairs of state, and wisely to balance the particular profit with the counterpoise of the public, according to the infinite variety of times, places, persons. A proof unanswerable for the superiority of princes above laws is this, that there were kings long before there were any laws. For a long time the word of a king was the only law; and if practice, as saith Sir Walter Raleigh, declare the greatness of authority, even the best kings of Judah and Israel were not tied to any law; but they did whatsoever they pleased in the greatest matters.

2. The unlimited jurisdiction of kings is so amply described by Samuel that it hath given occasion to some to imagine that it was but either a plot or trick of Samuel to keep the government himself and family by frightening the Israelites with the mischiefs in monarchy, or else a prophetic description only of the future ill-government of Saul. But the vanity of these conjectures are judiciously discovered in that majestical discourse of the true law of free monarchy, wherein it is evidently shown that the scope of Samuel was to teach the people a dutiful obedience to their king, even in those things which themselves did esteem mischievous and inconvenient; for by telling them what a king would do he, indeed, instructs them what a subject must suffer, yet not so that it is right for kings to do injury, but it is right for them to go unpunished by the people if they do it. So that in this point it is all one whether Samuel describe a king or a tyrant, for patient obedience is due to both; no remedy in the text against tyrants, but in crying and praying unto God in that day. But howsoever in a rigorous construction Samuel's description be applied to a tyrant, yet the words by a benign interpretation may agree with the manners of a just king, and the scope and coherence of the text doth best imply the more moderate or qualified sense of the words; for, as Sir Walter Raleigh confesses, all those inconveniences and miseries which are reckoned by Samuel as belonging to kingly government were not intolerable, but such as have been borne, and are still borne, by free consent of subjects towards their princes. Nay, at this day, and in this land, many tenants, by their tenures and services, are tied to the same subjection even to subordinate and inferior lords: to serve the king in his wars and to till his ground is not only agreeable to the nature of subjects but much desired by them, according to their

several births and conditions. The like may be said for the offices of women servants, confectioners, cooks, and bakers; for we cannot think that the king would use their labours without giving them wages, since the text itself mentions a liberal reward of his servants.

As for the taking of the tenth of their seed, of their vines, and of their sheep, it might be a necessary provision for their king's household, and so belong to the right of tribute; for whereas is mentioned the taking of the tenth, it cannot agree well to a tyrant, who observes no proportion in fleecing his people.

Lastly, the taking of their fields, vineyards, and olive trees, if it be by force or fraud or without just recompense to the damage of private persons only, it is not to be defended; but if it be upon the public charge and general consent, it might be justified as necessary at the first erection of a kingdom, for those who will have a king are bound to allow him royal maintenance by providing revenues for the Crown, since it is both for the honour, profit, and safety, too, of the people to have their king glorious, powerful, and abounding in riches. Besides, we all know the lands and goods of many subjects may be oftentimes legally taken by the king, either by forfeitures, escheat, attainder, outlawry, confiscation, or the like. Thus we see Samuel's character of a king may literally well bear a mild sense, for greater probability there is that Samuel so meant, and the Israelites so understood it; to which this may be added that Samuel tells the Israelites: "This will be the manner of the king that shall reign over you, and ye shall cry because of your king which ye shall have chosen you" — that is to say, thus shall be the common custom or fashion or proceeding of Saul your king; or, as the vulgar Latin renders it, "This shall be the right or law of your king" — not meaning, as some expound it, the casual event or act of some *individuum vagum*, or indefinite king, that might happen one day to tyrannize over them. So that Saul, and the constant practice of Saul, doth best agree with the literal sense of the text. Now that Saul was no tyrant, we may note that the people "asked a king, as all nations had." God answers, and bids Samuel to "hear the voice of the people in all things which they spake," and "appoint them a king." They did not ask a tyrant, and to give them a tyrant when they asked a king had not been to hear their voice in all things, but rather when they asked an egg to have given them a scorpion, unless we will say that all nations had tyrants.

Besides, we do not find in all Scripture that Saul was punished, or so much as blamed, for committing any of those acts which Samuel describes; and if Samuel's drift had been only to terrify the people, he would not have forgotten to foretell Saul's bloody cruelty in murdering eighty-five innocent priests, and smiting with the edge of the sword the city of Nob, both man, woman, and child. Again, the Israelites never shrank at these conditions proposed by Samuel, but accepted of them as such as all other nations were bound unto; for their conclusion is: "Nay, but we will have a king over us, that we also may be like all the nations, and that our king may judge us, and go out before us to fight our battles" — meaning he should earn his privileges by doing the work for them, by judging them and fighting for them. Lastly, whereas the mention of the people's crying unto the Lord argues they should be under some tyrannical oppression, we may remember that the people's complaints and cries are not always an argument of their living under a tyrant. No man can say King Solomon was a tyrant, yet all the congregation of Israel complained that Solomon made their yoke grievous, and therefore their prayer to Rehoboam is: "Make thou the grievous service of thy father Solomon and his heavy yoke which he put upon us lighter, and we will serve thee." To conclude: it is true Saul lost his kingdom, but not for being too cruel or tyrannical to his subjects, but by being too merciful to his enemies. His sparing Agag when he should have slain him was the cause why the kingdom was torn from him.

3. If any desire the direction of the New Testament, he may find our Saviour limiting and distinguishing royal power, "By giving to Cæsar those things that were Cæsar's, and to God those things that were God's." *Obediendum est in quibus mandatum Dei non impeditur*. "We must obey where the commandment of God is not hindered"; there is no other law but God's law to hinder our obedience. It was the answer of a Christian to the Emperor: "We only worship God, in other things we gladly serve you." And it seems Tertullian thought whatsoever was not God's was the Emperor's, when he saith: *Bene opposuit Cæsari pecuniam, te ipsum Deo, alioqui quid erit Dei, si omnia Cæsaris* ("Our Saviour hath well apportioned our money for Cæsar, and ourselves for God, for otherwise what shall God's share be if all be Cæsar's"). The Fathers mention no reservation of any power to the laws of the land or to the people. St. Ambrose, in his apology for

David, expressly saith: "He was a king and therefore bound to no laws, because kings are free from the bonds of any fault." St. Augustine also resolves: *Imperator non est subjectus legibus, qui habet in potestate alias leges ferre* ("The Emperor is not subject to laws who hath power to make other laws"). For, indeed, it is the rule of Solomon that "We must keep the king's commandment," and not to say, "What dost thou?" because "Where the word of a king is there is power," and all that he pleaseth he will do.

If any mislike this divinity in England, let him but hearken to Bracton, Chief Justice in Henry III's days, which was since the institution of Parliaments. His words are, speaking of the King: *Omnes sub eo, et ipse sub nullo, nisi tantum sub Deo, etc.* ("All are under him, and he under none but God.") If he offend, since no writ can go against him, their remedy is by petitioning him to amend his fault, which, if he shall not do, it will be punishment sufficient for him to expect God as a revenger; let none presume to search into his deeds, much less to oppose them.

When the Jews asked our Blessed Saviour whether they should pay tribute, He did not first demand what the law of the land was, or whether there was any statute against it, nor inquired whether the tribute were given by consent of the people, nor advised them to stay their payment till they should grant it. He did no more but look upon the superscription and concluded: "This image you say is Cæsar's, therefore give it to Cæsar." Nor must it here be said that Christ taught this lesson only to the conquered Jews, for in this He gave direction for all nations who are bound as much in obedience to their lawful kings as to any conqueror or usurper whatsoever.

Whereas "being subject to the higher powers" some have strained these words to signify the laws of the land, or else to mean the highest power, as well aristocratical and democratical as regal. It seems St. Paul looked for such interpretation, and therefore thought fit to be his own expositor, and to let it be known that by power he understood a monarch that carried a sword: "Wilt thou not be afraid of the power?" — that is, the ruler that carrieth the sword, for "he is the minister of God to thee . . . for he beareth not the sword in vain." It is not the law that is the minister of God, or that carries the sword, but the ruler or magistrate; so they that say the law governs the kingdom may as well say that the carpenter's rule builds a house, and not the carpenter,

for the law is but the rule or instrument of the ruler. And St. Paul concludes: "For this cause pay you tribute also, for they are God's ministers, attending continually upon this very thing. Render therefore tribute to whom tribute is due, custom to whom custom." He doth not say give as a gift to God's minister, but ἀπιδόρε — render or restore tribute as a due. Also St. Peter doth most clearly expound this place of St. Paul, where he saith: "Submit yourselves to every ordinance of man for the Lord's sake, whether it be to the king as supreme or unto governors as unto them that are sent by him." Here the very self-same word — supreme or *ὑπερεχούσας* — which St. Paul coupleth with power, St. Peter conjoineth with the king, βασιλεὺς ὡς ὑπερέχοντι, thereby to manifest that "king" and "power" are both one. Also St. Peter expounds his own words of human ordinance, to be the king who is the *lex loquens*, a speaking law; he cannot mean that kings themselves are a human ordinance since St. Paul calls the supreme power the ordinance of God, and the wisdom of God saith: "By Me kings reign." But his meaning must be that the laws of kings are human ordinances. Next, the governors that are sent by him, that is, by the king, not by God, as some corruptly would wrest the text, to justify popular governors as authorized by God; whereas, in grammatical construction "him," the relative, must be referred to the next antecedent, which is king; besides, the antithesis between "supreme" and "sent" proves plainly that the governors were sent by kings, for if the governors were sent by God, and the king be a human ordinance, then it follows that the governors were supreme and not the king; or if it be said that both king and governors are sent by God, then they are both equal, and so neither of them supreme. Therefore St. Peter's meaning is, in short: obey the laws of the king or of his ministers. By which it is evident that neither St. Peter nor St. Paul intended other form of government than only monarchical, much less any subjection of princes to human laws.

That familiar distinction of the schoolmen, whereby they subject kings to the directive but not to the co-active power of laws, is a confession that kings are not bound by the positive laws of any nation, since the compulsory power of laws is that which properly makes laws to be laws by binding men by rewards or punishment to obedience; whereas the direction of the law is but like the advice and direction which the king's council gives the king, which no man says is a law to the king.

4. There want not those who believe that the first invention of laws was to bridle and moderate the over-great power of kings; but the truth is, the original of laws was for the keeping of the multitude in order. Popular estates could not subsist at all without laws, whereas kingdoms were governed many ages without them. The people of Athens, as soon as they gave over kings, were forced to give power to Draco first, then to Solon, to make them laws not to bridle kings but themselves; and though many of their laws were very severe and bloody, yet for the reverence they bare to their law-makers they willingly submitted to them. Nor did the people give any limited power to Solon, but an absolute jurisdiction, at his pleasure to abrogate and confirm what he thought fit, the people never challenging any such power to themselves. So the people of Rome gave to the ten men, who were to choose and correct their laws for the Twelve Tables, an absolute power without any appeal to the people.

5. The reason why laws have been also made by kings was this: when kings were either busied with wars, or distracted with public cares, so that every private man could not have access to their persons to learn their wills and pleasure, then of necessity were laws invented, that so every particular subject might find his prince's pleasure deciphered to him in the tables of his laws, that so there might be no need to resort unto the king; but either for the interpretation or mitigation of obscure or rigorous laws, or else in new cases, for a supplement where the law was defective. By this means both king and people were in many things eased. First, the king, by giving laws, doth free himself of great and intolerable troubles, as Moses did himself by choosing elders. Secondly, the people have the law as a familiar admonisher and interpreter of the king's pleasure which being published throughout the kingdom doth represent the presence and majesty of the king. Also the judges and magistrates — whose help in giving judgment in many causes kings have need to use — are restrained by the common rules of the law from using their own liberty to the injury of others, since they are to judge according to the laws, and not follow their own opinions.

6. Now albeit kings who make the laws be, as King James teacheth us, above the laws, yet will they rule their subjects by the law; and a king, governing in a settled kingdom, leaves to be a king, and degenerates into a tyrant, so soon as he seems to rule according to his laws;

yet where he sees the laws rigorous or doubtful he may mitigate and interpret. General laws made in Parliament may, upon known respects to the king, by his authority be mitigated or suspended upon causes only known to him. And although a king do frame all his actions to be according to the laws, yet he is not bound thereto but at his good will and for good example, or so far forth as the general law of the safety of the commonweal doth naturally bind him; for in such sort only positive laws may be said to bind the king, not by being positive, but as they are naturally the best or only means for the preservation of the commonwealth. By this means are all kings, even tyrants and conquerors, bound to preserve the lands, goods, liberties, and lives of all their subjects, not by any municipal law of the land so much as the natural law of a father, which binds them to ratify the acts of their forefathers and predecessors in things necessary for the public good of their subjects.

7. Others there be that affirm that, although laws of themselves do not bind kings, yet the oaths of kings at their coronations tie them to keep all the laws of their kingdoms. How far this is true, let us but examine the oath of the kings of England at their coronation, the words whereof are these: "Art thou pleased to cause to be administered in all thy judgments indifferent and upright justice, and to use discretion with mercy and verity? Art thou pleased that our upright laws and customs be observed, and dost thou promise that those shall be protected and maintained by thee?" These two are the articles of the king's oath, which concern the laity or subjects in general, to which the king answers affirmatively, being first demanded by the Archbishop of Canterbury:

Pleaseth it you to confirm and observe the laws and customs of ancient times, granted from God by just and devout kings unto the English nation, by oath unto the said people, especially the laws, liberties, and customs granted unto the clergy and laity by the famous King Edward?

We may observe in these words of the articles of the oath that the king is required to observe not all the laws, but only the upright, and that with discretion and mercy. The word "upright" cannot mean all laws, because in the oath of Richard II, I find evil and unjust laws mentioned which the king swears to abolish; and in the old "Abridgment of Statutes," set forth in Henry VIII's days, the king is to swear

wholly to put out evil laws, which he cannot do if he be bound to all laws. Now, what laws are *upright* and what *evil*? Who shall judge out the king, since he swears to administer upright justice with discretion and mercy or, as Bracton hath it, *equitatem præcipiat, et misericordiam*. So that, in effect, the king doth swear to keep no laws but such as, in his judgment, are upright, and those not literally always, but according to equity of his conscience joined with mercy, which is properly the office of a chancellor rather than of a judge; and if a king did strictly swear to observe all the laws, he could not, without perjury, give his consent to the repealing or abrogating of any statute by Act of Parliament which would be very mischievous to the state.

But let it be supposed for truth that kings do swear to observe all the laws of their kingdom, yet no man can think it reason that kings should be more bound by their voluntary oaths than common persons are by theirs. Now, if a private person make a contract, either with oath or without oath, he is no further bound than the equity and justice of the contract ties him; for a man may have relief against an unreasonable and unjust promise, if either deceit, or error, or force, or fear induced him thereunto; or if it be hurtful or grievous in the performance. Since the laws in many cases give the king a prerogative above common persons, I see no reason why he should be denied the privilege which the meanest of his subjects doth enjoy.

Here is a fit place to examine a question which some have moved: whether it be a sin for a subject to disobey the king if he command anything contrary to his laws? For satisfaction in this point we must resolve that not only in human laws, but even in divine, a thing may be commanded contrary to law, and yet obedience to such a command is necessary. The sanctifying of the Sabbath is a divine law; yet if a master command his servant not to go to church upon a Sabbath Day, the best divines teach us that the servant must obey this command,¹ though it may be sinful and unlawful in the master; because the servant hath no authority or liberty to examine and judge whether his master sin or no in so commanding; for there may be a just cause for a master to keep his servant from church, as appears Luke xiv. 5. Yet it is not fit to tie the master to acquaint his servant with his secret counsels or present necessity; and in such cases the servant's not going to church becomes the sin of the master, and not of the servant. The

like may be said of the king's commanding a man to serve him in the wars; he may not examine whether the war be just or unjust, but must obey, since he hath no commission to judge of the titles of kingdoms or causes of war; nor hath any subject power to condemn his king for breach of his own laws.

8. Many will be ready to say it is a slavish and dangerous condition to be subject to the will of any one man who is not subject to the laws. But such men consider not (1) that the prerogative of a king is to be above all laws, for the good only of them that are under the laws, and to defend the peoples' liberties, as his Majesty graciously affirmed in his speech after his last answer to the Petition of Right. Howsoever some are afraid of the name of prerogative, yet they may assure themselves the case of subjects would be desperately miserable without it. The Court of Chancery itself is but a branch of the king's prerogative to relieve men against the inexorable rigour of the law which without it is no better than a tyrant, since *summum jus* is *summa injuria*. General pardons at the coronation and in parliaments are but the bounty of the prerogative. (2) There can be no laws without a supreme power to command or make them. In all aristocracies the nobles are above the laws, and in all democracies the people. By the like reason, in a monarchy the king must of necessity be above the laws; there can be no sovereign majesty in him that is under them; that which giveth the very being to a king is the power to give laws; without this power he is but an equivocal king. It skills not which way kings come by their power, whether by election, donation, succession, or by any other means; for it is still the manner of the government by supreme power that makes them properly kings, and not the means of obtaining their crowns. Neither doth the diversity of laws nor contrary customs, whereby each kingdom differs from another, make the forms of commonweal different unless the power of making laws be in several subjects.

For the confirmation of this point, Aristotle saith that a perfect kingdom is that wherein the king rules all things according to his own will, for he that is called a king according to the law makes no kind of kingdom at all. This, it seems, also the Romans well understood to be most necessary in a monarchy; for though they were a people most greedy of liberty, yet the senate did free Augustus from all necessity of laws, that he might be free of his own authority and of

absolute power over himself and over the laws, to do what he pleased and leave undone what he listed; and this decree was made while Augustus was yet absent. Accordingly we find that Ulpian, the great lawyer, delivers it for a rule of the civil law: *Princeps legibus solutus est* ("The prince is not bound by the laws").

9. If the nature of laws be advisedly weighed, the necessity of the princes being above them may more manifest itself. We all know that a law in general is the command of a superior power. Laws are divided — as Bellarmine divides the Word of God — into written and unwritten, not for that it is not written at all, but because it was not written by the first devisers or makers of it. The common law, as the Lord Chancellor Egerton teacheth us, is the common custom of the realm. Now, concerning customs, this must be considered that for every custom there was a time when it was no custom, and the first precedent we now have had no precedent when it began. When every custom began, there was something else than custom that made it lawful, or else the beginning of all customs were unlawful. Customs at first became lawful only by some superior which did either command or consent unto their beginning. And the first power which we find, as it is confessed by all men, is the kingly power which was both in this and in all other nations of the world long before any laws or any other kind of government was thought of; from whence we must necessarily infer that the common law itself, or common customs of this land, were originally the laws and commands of kings at first unwritten.

Nor must we think the common customs — which are the principles of the common law, and are but few — to be such, or so many, as are able to give special rules to determine every particular cause. Diversity of cases are infinite, and impossible to be regulated by any law, and therefore we find even in the Divine laws which are delivered by Moses, there be only certain principal laws which did not determine, but only direct, the High Priest or magistrate, whose judgment in special cases did determine what the general law intended. It is so with the common law, for when there is no perfect rule judges do resort to those principles or common law axioms whereupon former judgments in cases somewhat like have been delivered by former judges, who all receive authority from the king in his right and name to give sentence according to the rules and precedents of ancient times; and where precedents have failed the judges have resorted to the general law of

reason, and accordingly given judgment without any common law to direct them. Nay, many times where there have been precedents to direct, they, upon better reason only, have changed the law both in causes criminal and civil, and have not insisted so much on the examples of former judges, as examined and corrected their reasons; thence it is that some laws are now obsolete and out of use, and the practice quite contrary to what it was in former times, as the Lord Chancellor Egerton proves by several instances.

Nor is this spoken to derogate from the common law, for the case standeth so with the laws of all nations, although some of them have their laws and principles written and established; for, witness to this we have Aristotle — his testimony in his *Ethics* and in several places in his *Politics*. I will cite some of them:

Every law is in the general, but of some things there can be no general law. . . . When therefore the law speaks in general, and something falls out after besides the general rule, then it is fit that what the lawmaker hath omitted, or where he hath erred by speaking generally, it should be corrected or supplied as if the lawmaker himself were present to ordain it. The governor, whether he be one man or more, ought to be lord over all those things whereof it was impossible the law should exactly speak, because it is not easy to comprehend all things under general rules. . . . Whatsoever the law cannot determine, it leaves to the governors to give judgment therein, and permits them to rectify whatsoever upon trial they find to be better than the written laws.

Besides, all laws are of themselves dumb, and some or other must be trusted with the application of them to particulars, by examining all circumstances, to pronounce when they are broken, or by whom. This work of right application of laws is not a thing easy or obvious for ordinary capacities, but requires profound abilities of nature for the beating out of the truth — witness the diversity and sometimes the contrariety of opinions of the learned judges in some difficult points.

10. Since this is the common condition of laws, it is also most reasonable that the lawmaker should be trusted with the application or interpretation of the laws, and for this cause anciently the kings of this land have sitten personally in courts of judicature, and are still representatively present in all courts; the judges are but substituted, and called the king's justices, and their power ceaseth when the king is in place. To this purpose Bracton, that learned Chief Justice in

the reign of Henry III, saith in express terms: "In doubtful and obscure points the interpretation and will of our lord the king is to be expected, since it is his part to interpret who made the law"; for, as he saith in another place, *Rex et non alius debet judicare, si solus ad id sufficere possit, etc.*: "The king, and nobody else, ought to give judgment, if he were able, since by virtue of his oath he is bound to it. Therefore the king ought to exercise power as the vicar or minister of God; but if our lord the king be not able to determine every cause, to ease part of his pains by distributing the burden to more persons, he ought to choose wise men fearing God, etc., and make justices of them." Much to the same purpose are the words of Edward I in the beginning of his book of *Laws*, written by his appointment by John Briton, Bishop of Hereford:

We will that our own jurisdiction be above all the jurisdictions of our realm, so as in all manner of felonies, trespasses, contracts, and in all other actions, personal or real, we have power to yield such judgments as do appertain without other process wheresoever we know the right truth as judges.

Neither may this be taken to be meant of an imaginary presence of the king's person in his courts, because he doth immediately after in the same place severally set forth by themselves the jurisdictions of his ordinary courts, but must necessarily be understood of a jurisdiction remaining in the king's royal person. And that this, then, was no new-made law, or first brought in by the Norman Conquest, appears by a Saxon law made by King Edgar in these words, as I find them in Mr. Lambert:

Nemo in lite regem appellato, nisi quidem domi justitiam consequi, aut impetrare non poterit, sin summo jure domi urgeatur, ad regem ut is onus aliqua ex parte allevet, provocato. ("Let no man in suit appeal to the king unless he may not get right at home; but if the right be too heavy for him, then let him go to the king to have it eased.")

As the judicial power of kings was exercised before the Conquest, so in those settled times after the Conquest, wherein parliaments were much in use, there was a high court following the king, which was the place of sovereign justice both for matter of law and conscience, as may appear by a parliament in Edward I's time taking order, "That the Chancellor and the Justices of the Bench should follow the King,

to the end that he might have always at hand able men for his direction in suits that came before him." And this was after the time that the Court of Common Pleas was made stationary, which is an evidence that the king reserved a sovereign power by which he did supply the want or correct the rigour of the common law, because the positive law, being grounded upon that which happens for the most part, cannot foresee every particular which time and experience bring forth.

[11.] Therefore, though the common law be generally good and just, yet in some special case it may need correction by reason of some considerable circumstance falling out, which at the time of lawmaking was not thought of. Also sundry things do fall out, both in war and peace, that require extraordinary help and cannot wait for the usual care of common law, the which is not performed but altogether after one sort, and that not without delay of help and expense of time; so that, although all causes are, and ought to be, referred to the ordinary process of common law, yet rare matters from time to time do grow up meet, for just reasons, to be referred to the aid of the absolute authority of the prince; and the statute of Magna Charta hath been understood of the institution then made of the ordinary jurisdiction in common causes, and not for restraint of the absolute authority serving only in a few rare and singular cases, for though the subjects were put to great damage by false accusations and malicious suggestions made to the king and his council, especially during the time of King Edward III, whilst he was absent in the wars in France, insomuch as in his reign divers statutes were made that provided none should be put to answer before the king and his council without due process. Yet it is apparent the necessity of such proceedings was so great that both before Edward III's days and in his time, and after his death, several statutes were made to help and order the proceedings of the king and his council. As the parliament in 28 Edward I, cap. 5, did provide: "That the Chancellor and Justices of the King's Bench should follow the King, that so he might have near unto him some that be learned in the laws which be able to order all such matters as shall come unto the court at all times when need shall require." By the statute of 37 Edward III, cap. 18, taliation was ordained, in case the "suggestion to the King proved untrue." Then 38 Edward III, cap. 9, takes away taliation and appoints imprisonment till the king and party grieved be satisfied. In the statutes of 17 Richard II, cap. 6, and

15 Henry VI, cap 4, damages and expenses are awarded in such cases. In all these statutes it is necessarily implied that complaints upon just causes might be moved before the king and his council.

At a parliament at Gloucester, 2 Richard II, when the Commons made petition, "That none might be forced by writ out of Chancery or by Privy Seal to appear before the King and his Council to answer touching freehold," the king's answer was:

He thought it not reasonable that he should be constrained to send for his lieges upon causes reasonable; and albeit he did not purpose that such as were sent for should answer (finalment) peremptorily touching their freehold, but should be remanded for trial thereof as law required, provided always that at the suit of the party where the King and his Council shall be credibly informed that, because of maintenance, oppression, or other outrages, the common law cannot have duly her course, in such case the counsel for the party.

Also in the thirteenth year of his reign, when the Commons did pray that, upon pain of forfeiture, the chancellor or council of the king should not, after the end of the parliament, make any ordinance against the common law, the king answered:

Let it be used as it hath been used before this time, so as the regality of the king be saved, for the king will save his regalities as his progenitors have done.

Again, in the fourth year of Henry IV, when the Commons complained against subpoenas and other writs grounded upon false suggestions, the king answered:

That he would give in charge to his officers, that they should abstain more than before time they had, to send for his subjects in that manner. But yet, it is not our intention that our officers shall so abstain that they may not send for our subjects in matters and causes necessary, as it hath been used in the time of our good progenitors.

Likewise when, for the same cause, complaint was made by the Commons, anno 3, Henry V, the king's answer was: *Le roy s'avisera* ("The king will be advised"), which amounts to a denial for the present by a phrase peculiar for the king's denying to pass any Bill that hath passed the Lords and Commons.

These complaints of the Commons, and the answers of the king,

discover that such moderation should be used that the course of the common law be ordinarily maintained, lest subjects be convented before the king and his council without just cause, that the proceedings of the council-table be not upon every slight suggestion, nor to determine finally concerning freehold of inheritance. And yet that upon cause reasonable, upon credible information in matters of weight, the king's regality or prerogative in sending for his subjects be maintained, as of right it ought, and in former times hath been constantly used.

King Edward I, finding that Bogo de Clare was discharged of an accusation brought against him in parliament, for that some formal imperfections were found in the complaint, commanded him nevertheless to appear before him and his council, *ad faciendum et recipiendum quod per regem et ejus concilium fuerit faciendum*; and so proceeded to an examination of the whole cause. — 8 Edward I.

Edward III, in the Star Chamber — which was the ancient Council Chamber at Westminster — upon the complaint of Elizabeth Audley, commanded James Audley to appear before him and his council, and determined a controversy between them touching lands contained in the covenants of her jointure — “Rot. Clause,” de anno 41, Edward III.

Henry V, in a suit before him and his council for the titles of the manors of Seere and St. Lawrence, in the Isle of Thanet in Kent, took orders for sequestering the profits till the right were tried, as well for avoiding the breach of the peace, as for prevention of waste and spoil — “Rot. Patin,” anno 6, Henry V.

Henry VI commanded the justices of the bench to stay the arraignment of one Verney, of London, till they had other commandment from him and his council, because Verney, being indebted to the king and others, practised to be indicted of felony, wherein he might have his clergy, and make his purgation, of intent to defraud his creditors — 34 Henry VI “Rot. 37 in Banco Regis.”

Edward IV and his council in the Star Chamber heard the cause of the master and poor brethren of St. Leonards in York, complaining that Sir Huge Hastings and others withdrew from them a great part of their living, which consisted chiefly upon the having of a thrave of corn of every plough land within the counties of York, Westmoreland, Cumberland, and Lancashire — “Rot. Paten” de anno 8, Edward IV part iii., memb. 14.

Henry VII and his council, in the Star Chamber, decreed that

Margery and Florence Becket should sue no further in their cause against Alice Radley, widow, for lands in Woolwich and Plumstead in Kent, for as much as the matter had been heard, first, before the council of King Edward IV, after that, before the President of the Requests of that King, Henry VII, and then, lastly, before the council of the said King — 1 Henry VII.

What is hitherto affirmed of the dependency and subjection of the common law to the sovereign prince, the same may be said as well of all statute laws; for the king is the sole immediate author, corrector, and moderator of them also; so that neither of these two kinds of laws are or can be any diminution of that natural power which kings have over their people by right of fatherhood, but rather are an argument to strengthen the truth of it; for evidence whereof we may in some points consider the nature of parliaments, because in them only all statutes are made.

12. Though the name of "parliament," as Mr. Camden saith, be of no great antiquity, but brought in out of France, yet our ancestors, the English Saxons, had a meeting which they called "the assembly of the wise," termed in Latin, *conventum magnatum*, or *praesentia regis*, *procerumq.*, *prelateralumq.* *collectorum* ("The meeting of the nobility, or the presence of the king, prelates, and peers assembled"), or, in general, *magnum concilium* or *commune concilium*; and many of our kings in elder times made use of such great assemblies for to consult of important affairs of state, all which meetings in a general sense may be termed "parliaments."

Great are the advantages which both the king and people may receive by a well-ordered parliament. There is nothing more expresseth the majesty and supreme power of a king than such an assembly, wherein all his people acknowledge him for sovereign lord, and make all their addresses to him by humble petition and supplication; and by their consent and approbation do strengthen all the laws which the king at their request and by their advice and ministry shall ordain. Thus they facilitate the government of the king by making the laws unquestionable either to the subordinate magistrates or refractory multitude. The benefit which accrues to the subject by parliaments is that by their prayers and petitions kings are drawn many times to redress their just grievances, and are overcome by their importunity to grant many things which otherwise they would not yield unto; for

the voice of a multitude is casier heard. Many vexations of the people are without the knowledge of the king, who in parliament seeth and heareth his people himself; whereas at other times he commonly useth the eyes and ears of other men.

Against the antiquity of parliaments we need not dispute, since the more ancient they be, the more they make for the honour of monarchy; yet there be certain circumstances touching the forms of parliaments which are fit to be considered.

First, We are to remember that until about the time of the Conquest there could be no parliaments assembled of the general states of the whole kingdom of England, because till those days we cannot learn it was entirely united into one kingdom, but it was either divided into several kingdoms or governed by several laws. When Julius Cæsar landed, he found four kings in Kent, and the British names of Dammonii, Durotriges, Belgæ, Attrebatii, Trinobantes, Icenii, Silures, and the rest, are plentiful testimonies of the several kingdoms of Britains when the Romans left us. The Saxons divided us into seven kingdoms. When the Saxons were united all into a monarchy, they had always the Danes their companions or their masters in the empire till Edward the Confessor's days, since whose time the kingdom of England hath continued united as now it doth; but for a thousand years before we cannot find it was entirely settled during the time of any one king's reign. As under the Mercian law, the West Saxons were confined to the Saxon laws, Essex, Norfolk, Suffolk, and some other places were vexed with Danish laws; the Northumbrians also had their laws apart. And until Edward the Confessor's reign, who was next but one before the Conqueror, the laws of the kingdom were so several and uncertain that he was forced to cull a few of the most indifferent and best of them, which were from him called St. Edward's laws. Yet some say that Edgar made those laws, and that the Confessor did but restore and mend them. Alfred also gathered out of Mulmutius laws such as he translated into the Saxon tongue. Thus during the time of the Saxons the laws were so variable that there is little or no likelihood to find any constant form of parliaments of the whole kingdom.

13. A second point considerable is whether in such parliaments as was in the Saxons' times the nobility and clergy only were of those assemblies, or whether the Commons were also called? Some are of

the opinion that though none of the Saxon laws do mention the Commons, yet it may be gathered by the word "wisemen," the Commons are intended to be of those assemblies, and they bring, as they conceive, probable arguments to prove it from the antiquity of some boroughs that do yet send burgesses, and from the proscription of those in ancient demesne not to send burgesses to parliament. If it be true that the West Saxons had a custom to assemble burgesses out of some of their towns, yet it may be doubted whether other kingdoms had the same usage, but sure it is that during the Heptarchy the people could not elect any knights of the shire because England was not then divided into shires.

On the contrary, there be of our historians who do affirm that Henry I caused the Commons first to be assembled by knights and burgesses of their own appointment, for before his time only certain of the nobility and prelates of the realm were called to consultation about the most important affairs of state. If this assertion be true, it seems a mere matter of grace of this king, and proves not any natural right of the people originally to be admitted to choose their knights and burgesses of parliament, though it had been more for the honour of parliaments if a king, whose title to the Crown had been better, had been author of the form of it, because he made use of it for his unjust ends. For thereby he secured himself against his competitor and elder brother by taking the oaths of the nobility in parliament and getting the crown to be settled upon his children. And as the king made use of the people, so they, by colour of parliament, served their own turns; for after the establishment of parliaments by strong hand and by the sword, they drew from him the Great Charter, which he granted the rather to flatter the nobility and people, as Sir Walter Raleigh, in his "Dialogue of Parliaments," doth affirm in these words:

The Great Charter was not originally granted legally and freely, for Henry I did but usurp the kingdom, and therefore the better to assure himself against Robert, his elder brother, he flattered the nobility and people with their charters; yea, King John that confirmed them had the like respect, for Arthur, Duke of Britain, was the undoubted heir of the Crown, upon whom King John usurped, and so to conclude, these charters had their original from kings *de facto*, but not *de jure* . . . the Great Charter had first an obscure birth by usurpation, and was secondly fostered and showed to the world by rebellion.

[14.] A third consideration must be that in the former parliaments, instituted and continued since King Henry I's time, is not to be found the usage of any natural liberty of the people; for all those liberties that are claimed in parliament are the liberties of grace from the king, and not the liberties of nature to the people; for if the liberty were natural, it would give power to the multitude to assemble themselves when and where they please, to bestow sovereignty, and by pactions to limit and direct the exercise of it. Whereas the liberties of favour and grace which are claimed in parliaments are restrained both for time, place, persons, and other circumstances, to the sole pleasure of the king, the people cannot assemble themselves, but the king, by his writs, calls them to what place he pleases; and then again scatters them with his breath at an instant, without any other cause shown than his will. Neither is the whole summoned, but only so many as the king's writs appoint. The prudent King Edward I summoned always those barons of ancient families that were most wise to his parliament, but omitted their sons after their death if they were not answerable to their parents in understanding. Nor have the whole people voices in the election of knights of the shire or burgesses, but only freholders in the counties, and freemen in the cities and boroughs; yet in the City of Westminster all the householders, though they be neither freemen nor freholders, have voices in their election of burgesses. Also during the time of parliament, those privileges of the House of Commons of freedom of speech, power to punish their own members, to examine the proceedings and demeanour of courts of justice and officers, to have access to the king's person, and the like, are not due by any natural right, but are derived from the bounty or indulgence of the king, as appears by a solemn recognition of the House; for at the opening of the parliament, when the Speaker is presented to the king, he, in the behalf and name of the whole House of Commons, humbly craves of his Majesty, "That he would be pleased to grant them their accustomed liberties of freedom of speech, of access to his person, and the rest." These privileges are granted with a condition implied that they keep themselves within the bounds and limits of loyalty and obedience; for else why do the House of Commons inflict punishment themselves upon their own members for transgressing in some of these points; and the king, as head, hath many times punished the members for the like offences. The power which

the king giveth in all his courts to his judges or others to punish doth not exclude him from doing the like by way of prevention, concurrence, or evocation, even in the same point which he hath given in charge by a delegated power, for they who give authority by commission do always retain more than they grant. Neither of the two Houses claim an infallibility of not erring, no more than a general council can. It is not impossible but that the greatest may be in fault, or at least interested or engaged in the delinquency of one particular member. In such cases it is most proper for the head to correct, and not to expect the consent of the members, or for the parties peccant to be their own judges. Nor is it needful to confine the king in such cases within the circle of any one court of justice, who is supreme judge in all courts. And in rare and new cases rare and new remedies must be sought out; for it is a rule of the common law: *In novo casu, novum remedium est apponendum*; and the Statute of Westminster, 2, cap. 24 giveth power, even to the clerks of the Chancery, to make new forms of writs in new cases, lest any man that came to the King's Court of Chancery for help should be sent away without remedy. A precedent cannot be found in every case; and of things that happen seldom and are not common, there cannot be a common custom. Though crimes exorbitant do pose the king and council in finding a precedent for a condign punishment, yet they must not therefore pass unpunished.

I have not heard that the people by whose voices the knights and burgesses are chosen did ever call to an account those whom they had elected. They neither give them instructions or directions what to say, or what to do in parliament; therefore they cannot punish them when they come home for doing amiss. If the people had any such power over their burgesses, then we might call it the natural liberty of the people with a mischief. But they are so far from punishing that they may be punished themselves for intermeddling with parliamentary business; they must only choose, and trust those whom they choose to do what they list, and that is as much liberty as many of us deserve for our irregular elections of burgesses.

15. A fourth point to be considered is that in parliament all statutes or laws are made properly by the king alone, at the roagation of the people, as his Majesty King James, of happy memory, affirms in his true *Law of Free Monarchy*, and, as Hooker teacheth us, "That laws do not take their constraining force from the quality of such as devise

them, but from the power that doth give them the strength of laws." *Le roy le veull* ("the king will have it so") is the interperceptive phrase pronounced at the king's passing of every Act of Parliament. And it was the ancient custom for a long time, till the days of Henry V, that the kings, when any Bill was brought unto them that had passed both Houses, to take and pick out what they liked not, and so much as they chose was enacted for a law; but the custom of the later kings hath been so gracious as to allow always of the entire Bill as it hath passed both Houses.

16. The parliament is the king's court, for so all the oldest statutes called it, "the king in his parliament." But neither of the two Houses are that supreme court, nor yet both of them together; they are only members and a part of the body whereof the king is the head and ruler. The king's governing of this body of the parliament we may find most significantly proved, both by the statutes themselves as also by such precedents as expressly show us how the king, sometimes by himself, sometimes by his council, and other times by his judges, hath overruled and directed the judgments of the Houses of Parliament. For the king, we find that Magna Charta and the Charter of Forests, and many other statutes about those times, had only the form of the king's letters-patents, or grants under the great seal, testifying those great liberties to be the sole act and bounty of the king. The words of Magna Charta begin thus: "Henry, by the grace of God, etc. To all our Archbishops, etc., and our faithful subjects, greeting. Know ye, that we, of our mere free will, have granted to all freemen these liberties." In the same style goeth the Charter of Forests and other statutes. *Statutum Hibernie*, made at Westminster, 9 February, 14 Henry III, is but a letter of the king to Gerard, son of Maurice, Justice of Ireland. The Statute *de anno bissextili* begins thus: "The King to his Justices of the Bench, greeting, etc. *Explanation's statuti Glocestrie*, made by the king and his justices only, were received always as statutes, and are still printed amongst them.

The statute made for correction of the twelfth chapter of the Statute of Gloucester was signed under the great seal and sent to the justices of the bench, after the manner of a writ-patent, with a certain writ closed, dated by the king's hand at Westminster, requiring that "they should do and execute all and everything contained in it, although the same do not accord with the Statute of Gloucester in all things."

The Statute of Rutland is the king's letters to his treasurer and barons of his Exchequer and to his chamberlain.

The Statute of *Circumspecte Agis* runs: "The King to his judges sendeth greeting."

There are many other statutes of the same form, and some of them which run only in the majestic terms of, "The King commands," or "The King wills," or, "Our Lord the King hath established," or, "Our Lord the King hath ordained," or, "His Especial Grace hath granted," without mention of consent of the Commons or people, insomuch that some statutes rather resemble proclamations than Acts of Parliament. And indeed some of them were no other than mere proclamations, as the Provisions of Merton, made by the king at an assembly of the prelates and nobility, for the coronation of the king and his Queen Eleanor which begins: *Provisum est in curia domini regis apud Merton*. Also a provision was made 19 Henry III, *De assisa ultimæ presentationis*, which was continued, and allowed for law, until Tit. West 2 an. 13 Edward I, cap. 5, which provides the contrary in express words. This provision begins: *Provisum fuit coram dom. rege, archiepiscopis, episcopis et baronibus quod*, etc. It seems originally the difference was not great between a proclamation and a statute. This latter the king made by common council of the kingdom. In the former he had but the advice only of his great council of the peers or of his privy council only. For that the king had a great council besides his parliament appears by a record of 5 Henry IV about an exchange between the king and the Earl of Northumberland whereby the king promiseth to deliver to the earl lands to the value, by the advice of parliament or otherwise by the advice of his grand council and other estates of the realm which the king will assemble in case the parliament do not meet.

We may find what judgment in later times parliaments have had of proclamations by the statute of 31 of Henry VI, cap 8, in these words:

Forasmuch as the King, by the advice of his Council, hath set forth proclamations which obstinate persons have condemned, not considering what a king by his royal power may do, considering that sudden causes and occasions fortune many times which do require speedy remedies, and that by abiding for a Parliament in the meantime might happen great prejudice to ensue to the realm, and weighin^g also that his Majesty, which by the kingly and regal

power given him by God may do many things in such cases, should not be driven to extend the liberties and supremacy of his regal power and dignity by wilfulness of froward subjects: It is therefore thought fit that the King, with the advice of his honourable Council, should set forth proclamations for the good of the people and defence of his royal dignity, as necessity shall require.

This opinion of a House of Parliament was confirmed afterwards by a second parliament, and the statute made proclamations of as great validity as if they had been made in parliament. This law continued until the government of the state came to be under a Protector, during the minority of Edward VI, and in his first year it was repealed.

I find also that a parliament in the eleventh year of Henry VII did so great reverence to the actions or ordinances of the king that by statute they provided a remedy or means to levy a benevolence granted to the king, although by a statute made not long before all benevolences were damned and annulled for ever.

Mr. Fuller, in his arguments against the proceedings of the High Commission Court, affirms that the statute of 2 Henry IV, cap. 15, which giveth power to ordinaries to imprison and set fines on subjects, was made without the assent of the Commons because they are not mentioned in the Act. If this argument be good, we shall find very many statutes of the same kind, for the assent of the Commons was seldom mentioned in the elder parliaments. The most usual title of parliaments in Edward III, Richard II, the three Henrys, IV, V, VI, in Edward IV and Richard III's days, was: "The King and his Parliament, with the assent of the Prelates, Earls, and Barons, and at the petition, or at the special instance, of the Commons doth ordain."

The same Mr. Fuller saith that the statute made against Lollards was without the assent of the Commons, as appears by their petition in these words: "The Commons beseech that whereas a statute was made in the last Parliament, etc.," which was never assented nor granted by the Commons, but that which was done therein was done without their assent.

17. How far the king's council hath directed and swayed in parliament hath in part appeared by what hath been already produced. For further evidence we may add the Statute of Westminster, the first which saith.

These be the Acts of King Edward I, made at his first parliament general by his Council, and by the assent of Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm, etc.

The Statute of Bigamy saith:

In presence of certain Reverend Fathers, Bishops of England, and others of the King's Council, forasmuch as all the King's Council, as well Justices as others, did agree that they should be put in writing and observed.

The Statute of Acton, Burnel saith: "The King, for himself and by his Council, hath ordained and established."

In Articuli super Chartas, when the Great Charter was confirmed, at the request of his prelates, earls, and barons, we find these passages:

1. Nevertheless the King and his Council do not intend by reason of this Statute to diminish the King's right, etc.; 2. And notwithstanding all these things before-mentioned or any part of them, both the King and his Council and all they that were present at the making of this ordinance will and intend that the right and prerogative of his Crown shall be saved to him in all things.

Here we may see in the same parliament the charter of the liberties of the subjects confirmed and a saving of the king's prerogative. Those times neither stumbled at the name, nor conceived any such antipathy between the terms as should make them incompatible. -

The Statute of Escheators hath this title: "At the Parliament of our Sovereign Lord the King, by his Council it was agreed, and also by the King himself commanded." And the Ordinance of Inquest goeth thus: "It is agreed and ordained by the King himself and all his Council."

The Statute made at York, 9 Edward III, saith,

Whereas the knights, citizens and burgesses desired our Sovereign Lord the King in his Parliament, by their petition, that for his profit and the commodity of his Prelates, Earls, Barons, and Commons, it may please him to provide remedy; our Sovereign Lord the King desiring the profit of his people by the assent of his Prelates, Earls, Barons, and other nobles of his Council being there, hath ordained.

In the parliament primo Edward III, where Magna Charta was confirmed, I find this preamble:

At the request of the commonalty, by their petition made before the King and his Council in Parliament, by the assent of the Prelates, Earls, Barons, and other great men assembled, it was granted.

The Commons, presenting a petition unto the King which the King's council did mislike, were content thereupon to mend and¹ explain their petition; the form of which petition is in these words:

To their most redoubted Sovereign Lord the King praying the said Commons that whereas they have prayed him to be discharged of all manner of articles of the Eyre, etc. Which petition seemeth to his Council to be prejudicial unto him and in disinherison of his Crown if it were so generally granted. His said Commons, not willing nor desiring to demand things of him which should fall in disinherison of him or his Crown perpetually, as of escheators, etc., but of trespasses, misprisions, negligences, and ignorances, etc.

In the time of Henry III an order or provision was made by the king's council, and it was pleaded at the common law in bar to a writ of dower. The plaintiff's attorney could not deny it, and thereupon the judgment was *ideo sine die*. It seems in those days an order of the council board was either parcel of the common law or above it.

The reverend judges have had regard in their proceedings that before they would resolve or give judgment in new cases, they consulted with the king's privy council. In the case of Adam Brabson, who was assaulted by R. W. in the presence of the justices of assize at Westminster, the judges would have the advice of the king's council. For in a like case, because R. C. did strike a juror at Westminster, which passed in an inquest against one of his friends, "It was adjudged by all the council that his right hand should be cut off and his lands and goods forfeited to the king."

Green and Thorp were sent by judges of the bench to the king's council to demand of them whether by the statute of 14 Edward III, cap. 16, a word may be amended in a writ; and it was answered that a word may well be amended, although the statute speak but of a letter or syllable.

In the case of Sir Thomas Oghtred, knight, who brought a "formedon" against a poor man and his wife, they came and yielded to the demandant, which seemed suspicious to the court, whereupon judgment was stayed; and Thorp said: "That in the like case of Giles Blacket it was spoken of in Parliament, and we were commanded that

when any like case should come we should not go to judgment without good advice." Therefore the judges' conclusion was: *Sues au conseil et comment ils voillent que nous devomus faire, nous volume faire, et autrement nient en cest case* ("Sue to the council, and as they will have us to do, we will; and otherwise not in this case").

18. In the last place we may consider how much hath been attributed to the opinions of the king's judges by parliaments, and so find that the king's council hath guided and ruled the judges, and the judges guided the parliament.

In the parliament of 28 Henry VI, the Commons made suit:

That William de la Poole, Duke of Suffolk, should be committed to prison for many treasons and other crimes. The lords of the Higher House were doubtful what answer to give; the opinion of the judges was demanded. Their opinion was that he ought not to be committed, for that the Commons did not charge him with any particular offence but with general reports and slanders.

This opinion was allowed.

In another parliament, 31 Henry VI — which was prorogued — in the vacation the Speaker of the House of Commons was condemned in a thousand pounds damages in an action of trespass, and was committed to prison in execution for the same, when parliament was reassembled the Commons made suit to the King and Lords to have their Speaker delivered; the Lords demanded the opinion of the judges, whether he might be delivered out of prison by privilege of parliament? Upon the judges' answer it was concluded: "That the Speaker should still remain in prison according to the law, notwithstanding the privilege of parliament and that he was the Speaker," which resolution was declared to the Commons by Moyle, the king's serjeant-at-law; and the Commons were commanded, in the king's name, by the Bishop of Lincoln — in the absence of the Archbishop of Canterbury, then Chancellor — to choose another Speaker.

In septimo of Henry VIII a question was moved in parliament, "Whether spiritual persons might be convented before temporal judges for criminal cases." There Sir John Fineux and the other judges delivered their opinion: "That they might and ought to be"; and their opinion was allowed and maintained by the king and lords and Dr. Standish, who before had holden it. The same opinion was delivered from the bishops.

If a writ of error be sued in parliament upon a judgment given in the King's Bench, the lords of the Higher House alone — without the Commons — are to examine the errors; the lords are to proceed according to law, and for their judgment therein they are to be informed by the advice and counsel of the judges, who are to inform them what the law is, and so to direct them in their judgment, for the lords are not to follow their own opinions or discretions otherwise. So it was in a writ of error brought in parliament by the Dean and Chapter of Lichfield against the Prior and Covent of Newton-Panel, as appeareth by record. *See* Flower Dew's case, p. 1, h. 7, fol. 19.

NOTE ON SIR ROBERT FILMER

Filmer was born in the 1590's and died in 1653. Of his life little is known, certainly not enough to make it possible to assess his ideas on the basis of his personal experience. A country squire, his interests were nevertheless mainly scholarly, and he played almost no part in public life save for his writings in defense of authority in the state. Moreover, these were in general published anonymously, though their authorship rapidly became known. Perhaps as an acknowledgement of the service of his pen to the cause, he was knighted by Charles I. As a consequence thereof, and as a result of his ideas, he suffered under the Commonwealth the loss of some of his property and a brief imprisonment. After his release he spent his remaining years in retirement in Kent, pursuing his studies and continuing to use his pen.

In our own day Filmer is known almost exclusively for his *Patriarcha*, which appeared only posthumously in 1680 and achieved fame because Locke used it as representative of the ideas he was concerned with attacking. Actually it was by no means the most able of Filmer's works, and is less effective in its criticism of logical and sociological weaknesses in republican theories than were his other works. It constitutes a thorough-going and extreme defense of the doctrine of the divine rights of monarchy, though, in this field at least, King James I was a not less able and thorough exponent of the doctrine. Taken as a whole, however, Filmer's work is an uncompromising exposition of the theory of absolute royal power which, if it lacks the forcefulness of Hobbesian doctrine, nevertheless has the merit of covering a far wider range of ideas and of bringing to the set task a generous eclecticism. Certainly, as modern scholars have shown, Filmer does not deserve the contemptuous caricature which became his likeness as a result of Locke's *First Treatise*.

In Locke's age absolute royal power was dying, at least in England. A new middle class of lesser land owners and merchants combined the religious doctrines of the Calvinist reformation, the desire for economic opportunity, and the demand for free expression and a degree of political power, in order to attack the royal prerogative and to develop the power of parliament. Filmer deliberately set himself against

these tendencies, and in fighting a losing battle was frequently led to exaggeration. Nevertheless, almost alone in his time he recognized, as he deplored, the social implications of the shift in sovereignty which would result in the transfer of the balance of power from prerogative to parliament; and he foresaw the dangers of majority rule and of the legal positivism which was at once its foundation and its corollary. He saw clearly, too, the growing individualism of the time, which to him signified the danger of social dissolution only. Unrestrained authority in government and unconditional obedience on the part of the subjects were the only possible bulwarks against disintegration.

Filmer further perceived that unquestioning obedience to and respect for authority had to rest on a moral power above and beyond human contrivances. His technique for achieving this end was to identify royal power and the original fatherhood of mankind as proceeding from Adam and derived from God's ordinances to Adam and to Noah, whereby Adam and his heirs were ordained to be "monarchs of the world." In his zeal to justify absolute royal power, and particularly that of the Stuarts, he even developed a notorious genealogy by which he derived the Stuart kingship from Adam through Noah.

Filmer's contemporary importance was comparatively small, but he exerted later, during the Restoration, considerable influence on Toryism. His most mature works are the *Anarchy of Limited or Mixed Monarchy* and *Observations Concerning the Originall of Government*, which were written after *Patriarcha or the Natural Powers of Kings* (apparently written in 1642) and republished in 1679; but it was *Patriarcha* which became his most popular work despite its obvious weaknesses. It gained prominence immediately upon publication as a campaign pamphlet for the divine right doctrine which in England enjoyed its last triumph. In justice to Filmer, however, it must be pointed out that *Patriarcha*, which had never been completed, was published posthumously and apparently without any authorization left by the author. His work became a lively controversial issue and, long before Locke, it was attacked, among others, by James Tyrrell in his *Patriarcha non Monarcha* (1681); but it was Locke's *First Treatise* that saved Filmer and his works from oblivion, though Locke's account of Filmer undoubtedly merits reconsideration. For a more comprehensive appraisal of Filmer's works see Thomas I. Cook's

Introduction to this edition, especially the chapter, "The First Treatise and Patriarcha"; the same author's article on Filmer in the *Encyclopedia of the Social Sciences*; and J. W. Allen's essay, "Sir Robert Filmer," in F. J. C. Hearnshaw (ed.), *Social and Political Ideas of Some English Thinkers of the Augustan Age* (London, 1928).

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